Public Utilities

FORTNIGHTLY

March 18, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

"VIOLENT REMINDER..."

"MR. GIMLICK WANTS TO KNOW HOW YOU FEEL ABOUT *AIR* CIRCUIT BREAKERS THIS YEAR, BOSS?"

Violent reminders are not necessary to demonstrate the value of air in electrical protection. I-T-E circuit breakers, the pioneers of the air-immersion principle, have been proving the value by safe performance for a half century.

I-T-E AIR SWITCHGEAR
IMMERSED IN AIR • ENCASED IN STEEL

I-T-E CIRCUIT BREAKER CO., PHILADELPHIA, PA.

ified by A. A. Test- Laboratory. es ¼" up.

Barber Regulators are Vital for Gas Saving

RIGID economy on every type of gas fuel is a necessary part of the war program. Every public service corporation can help to promote maximum efficiency in the use of gas by advising the installation of reliable pressure regulators. You can safely recommend to your customers the use of Barber Regulators, which have long been recognized as mechanically perfect, highly dependable in action, and certain to give finer performance and greater fuel economy from any gas appliance.

The facilities of our company are now largely engaged upon essential war equipment. For those restricted purposes for which the sale of our regular products is permitted, we are continuing to supply them. When normal conditions again prevail, Barber will be well equipped to render its customary service to the trade on burners and regulators.

scriptive folders sup- d free for your trade. ite for new Catalog Prices on Barber nversion and Appliance rners, and Regulators.

HE BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland, Ohio

BARBER GAS PRESSURE REGULATORS

rber Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

Editor—HENRY C. SPURR
Managing Editor—FRANCIS X. WELCH
Associate Editors—ELLSWORTH NICHOLS, NEIL H. DUFFY
Financial Editor—OWEN ELY
Assistant Editors—M. C. MCCARTHY, A. R. KNIGHTON

Public Utilities Fortnightly

VOLUME XXXI *March 18, 1943* NUMBER 6

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
Publication Office ..... CANDLER BUILDING, BALTIMORE, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1943, by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

IT would certainly be interesting to get the reactions of Washington, Jefferson, Hamilton, and a few other Founding Fathers, to the topsy-turvy way in which our Federal government is being conducted these days. In their times, under the plain direction of the Constitution, Congress was supposed to make the laws, and the executive branch was supposed to administer them—with funds appropriated by Congress.

BUT that is not the way it seems to be working out at all. To listen to the debate raging between the opposite ends of Pennsylvania avenue, the innocent bystander gets the impression that the executive branch is making the laws and that Congress, through its grasp on the purse strings, is attempting to say how and by whom they shall be administered. We can probably trace this anomaly to the increasing use of executive orders and blank-check delegation of powers by Congress to the Executive during the last decade.

"IT'S not fair," say the New Dealers to a Congress which threatens to cut off this or that agency without a penny. "You make the laws, but we are supposed to administer them, with our own people and in our own way. You have the duty to appropriate money for us to do this."

"No such thing," retort the congressional rebels. "You started making laws to suit yourself and without our approval. So the only way we can check you is to cut your appropriation."

AND so the battle goes on. Odd part of this quarrel is that the third government branch—the judiciary—has evidently been short-circuited or blacked out of it by a lack of justiciable issues. Anyhow, we haven't heard a word on the subject from the Men in Black. It seems only a few years ago we heard so many bitter words about "judge-made law." Now the judges can't even make the headlines. *Sic transit gloria mundi.*

MALCOLM G. DAVIS

Sustained attraction of investment money is the inevitable criterion of a resonable return.

(SEE PAGE 342)

FRANK B. WARREN

Can a utility avoid taxes by rebating its own ratepayers?

(SEE PAGE 356)

A SOMEWHAT similar revolutionary trend has been going on within our own field of public utility regulation, tearing up previous conceptions of orderly principles and leaving the modern student of utility affairs bumping his own head in confusion. For example, time was when a utility's rates were raised or lowered

on the basis of whether or not they were reasonable—*per se*. True, there was a good bit of controversy over what constituted reasonableness. But we'll let that pass as a battle of yesteryear—or is it?

TODAY, we have the provocative suggestion that a utility's rates ought to be increased or lowered in proportion to its *tax liability*. The idea seems to be that if a utility finds itself making so much money that it is subject to excess profits tax, it ought to plow it all back into its own community by way of refunds to its own customers, instead of sending the money off to a total stranger—to wit: Henry Morgenthau, Jr.

IN this issue we have an analysis of this new idea of "rate reductions in lieu of taxes" by FRANK B. WARREN, assistant solicitor general of the National Association of Railroad and Utilities Commissioners, who is presently engaged in handling that association's affairs at its Washington office.

A NEWCOMER to our pages is MALCOLM G. DAVIS, whose article on the relationship of capital to utility rate of return appears on page 342 of this issue. Born in Washington, D. C., MR. DAVIS graduated from the Massachusetts Institute of Technology ('25) and has had various experience as a West coast power company engineer, a member of the California Railroad Commission's staff, and as a valuation consultant for Duquesne Light Company from 1929 to 1940. In 1941 he became affiliated with the Associated Gas & Electric system and the following year took his present post as vice president of Gilbert Associates, Inc., of New York city.

WILL M. MAUPIN, whose article on the human side of a utility commissioner's life begins on page 350, will be readily recalled by regular FORTNIGHTLY readers. He was formerly a member of the Nebraska State Railway Commission. Born in Callaway county, Missouri, in 1863, he entered the newspaper business at an early age and became one of the most well-known figures in Nebraska journalism, including editorship on William Jennings Bryan's *Commoner*. He is at present editor of his own country newspaper, the *Clay County* (Nebraska) *Sun*.

WE think the leading article in this issue by FRANCIS X. WELCH of our own editorial staff strikes a new high in ambition with respect to public utility enterprise. We have heard of wars being fought with food, victories being won by diplomacy, and nations being conquered by propaganda. But here is a writer who seriously suggests that the peace of the entire European continent can be manipulated by nothing more deadly than power switches, gas valves, toll connections, and so forth. In a world of fantastical reality we would not be surprised if there were not actually something to this—which is why we decided to publish MR. WELCH's article instead of advising him to take a few turns around the block in the fresh air.

WILL M. MAUPIN

There is only a single rose for every hundred brickbats in the life of the average utility commissioner.

(SEE PAGE 350)

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE commission's power to proceed in accordance with a sliding-scale arrangement to establish rates in the face of the congressional act of 1942, amending the Emergency Price Control Act, to require notice to the President or his representatives and consent to intervention in rate proceedings when a rate increase is proposed was discussed by the United States District Court for the District of Columbia, in hearing appeals from orders of the commission for the District of Columbia authorizing higher gas rates under a sliding-scale arrangement and limiting participation by Federal officers in that proceeding. (See page 1.)

A TELEPHONE company practice of terminating local telephone messages by cut-off devices for the duration of the war was discussed by the Pennsylvania commission. (See page 28.)

THE next number of this magazine will be out April 1st.

The Editors

Management needs weapons that turn facts into action!

★"Fact-Power"—the visual organization of graphically recorded facts.

What factor is the key to the initial success that leads to final Victory?

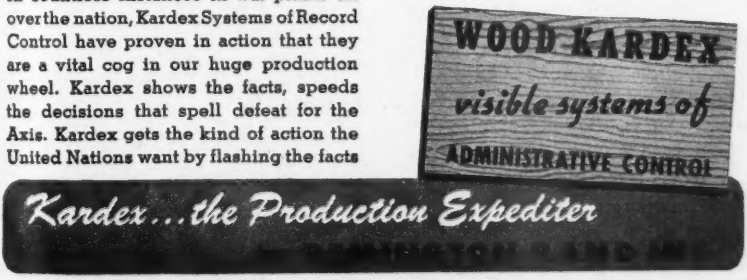
We say, without reservation, "Fact-power!" With "Fact-power" America and its allies have moved forward with incredible speed because "Fact-power"—the visual organization of graphically recorded facts—is the weapon management uses to create, plan, order, build, produce and ship countless things to the United Nations forces on every front. "Fact-power" is the weapon that will continue to tell the United Nations the truth of *how much, how many* and *how soon.*

In countless instances in war plants all over the nation, Kardex Systems of Record Control have proven in action that they are a vital cog in our huge production wheel. Kardex shows the facts, speeds the decisions that spell defeat for the Axis. Kardex gets the kind of action the United Nations want by flashing the facts on sight by the visible margin system with exclusive Graph-A-Matic signalling.

Get the facts on Kardex now. Write to Remington Rand, Inc., Systems Division, Buffalo, N. Y., for sample forms and catalog on the new Wood Administrator Kardex line. No obligation whatever.

WOOD KARDEX

Remington Rand now produces Kardex in wood without changing in any way the signal and control features that have made Kardex world famous. And it's built for permanent use, too. No critical materials are used.



In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

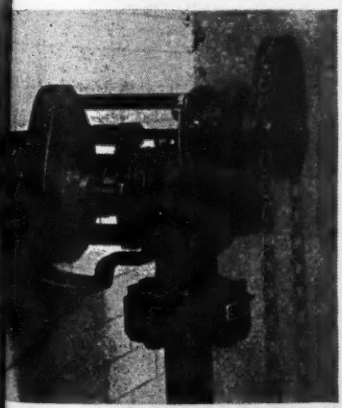
In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1-64, from 47 PUR(NS)

...an provides clean heat transfer surfaces to ... Combustion four-drum, bent-tube, 400,000 ... per hr., pulverized coal-fired boiler which serves ... new 40,000 kilowatt, 900 lb. per sq. in. Southern plant.

VULCAN SOOT BLOWERS



Chickasaw becomes another in the long list of plants depending on VULCAN Soot Blowers to assure highest heat transfer, real steam economy and freedom from frequent servicing.

The advanced design, HyVuloy and Vulite intimate contact bearings, HyVuloy elements and VULCAN'S Model LG-1 are guarantees of efficient, trouble-free operation in ANY plant.

Remember that whatever the characteristics of your boiler and setting, fuel, or load, Vulcan engineers will be glad to solve any soot blower installation and operating problem involved.

ULCAN SOOT BLOWER CORP., DUBOIS, PA.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

J. M. BROUGHTON
Governor of North Carolina

"Rural electrification is the best New Deal program initiated by the Roosevelt administration."

ROANE WARING
National Commander, American Legion.

"Let those who decry a capitalistic state point out the socialistic state or the communistic state that's able to supply a world at war."

LEVERETT SALTONSTALL
Governor of Massachusetts.

"When peace is declared, Washington must again become the bridge of our ship of state, not all the gun turrets, engine room, and galley combined."

RAYMOND MOLEY
Writing in the Wall Street Journal

"To recover their lost powers the states must avoid the temptation of making their full treasuries a grab-bag for the advocates of every scheme for spending money."

MILLARD TYDINGS
U. S. Senator from Maryland.

"This government is an overgrown monstrosity from top to bottom—an extravagant, wasteful bureaucracy in the midst of the whole war effort, and every Senator knows it."

CARTER MANASCO
U. S. Representative from Alabama.

"To my humble way of thinking, the nation that controls the most commercial aviation lines throughout the world after the war is over will be the nation that recovers quickest."

GEORGE D. AIKEN
U. S. Senator from Vermont.

"If policies are fixed by people who don't understand the critical agricultural situation and other troublesome conditions, then (Price Administrator) Brown is going to do no better than Henderson."

DWIGHT H. GREEN
Governor of Illinois.

"Bureaucracy and bossism, working hand in hand, have built for themselves during the last ten years a domain of wealth and power that has never been known in history, except, perhaps, in ancient Rome."

CAPTAIN EDDIE RICKENBACKER

"When this war is over—pray God it will be soon—there will be more rugged individualists come back to America from the four corners of the world than we ever had at any one time in our history, and I thank God for that."

These booklets, folders and tables are typical of the valuable wartime helps that Burroughs offers to users. They are designed to help users take full advantage of the time and labor saving features provided by their Burroughs machines —to aid them in getting the most out of their present equipment. For these and other wartime accounting helps, call the local Burroughs office.

BURROUGHS
ADDING MACHINE COMPANY
DETROIT, MICHIGAN

Burroughs

WASHINGTON BULLETIN
Business Week.

"American industry is now nearly at its ceiling. War expenditure, in the neighborhood of $6,500,000 a month, is due to rise gradually to something like $8,000,000,000 at the end of the year. Conversion to war is substantially complete."

EDITORIAL STATEMENT
Industrial News Review.

"This [new tax program] will be one of the best things that ever happened to the country. Millions of citizens who never took an interest in government before will begin to watch the financial policies of government to see that public money is not wasted."

ADMIRAL BEN MOREEL
Chief, Bureau of Yards and Docks U. S. Navy.

". . . no one can live without labor, but they certainly can live without labor unions. They are living without them in Germany and in Italy, and in Japan . . . and they will . . . live without them here if all of you don't get in there and pitch."

PAUL G. HOFFMAN
Chairman, Committee for Economic Development.

"The most which commerce and industry can now do to assure returning soldiers and workers at present engaged in war industries that peace-time jobs will be available is the least which must be done if enterprise and labor are to enjoy a free society."

CLYDE M. REED
U. S. Senator from Kansas.

"It occurs to the Senator from Kansas that possibly through the efforts of the senior Senator from Tennessee (Mr. McKellar) and the senior Senator from Kentucky (Mr. Barkley) the Tennessee river is now so full of dams that there is no room for building more dams."

FREDERICK C. CRAWFORD
President, National Association of Manufacturers.

"Unqualified coöperation is simply another term for appeasement; unrelenting opposition is little better than anarchy. Each, practiced with temperance and tolerance, has its place; but 'one track' minds are not going to serve this country in its present predicament."

EDWARD MARTIN
Governor of Pennsylvania.

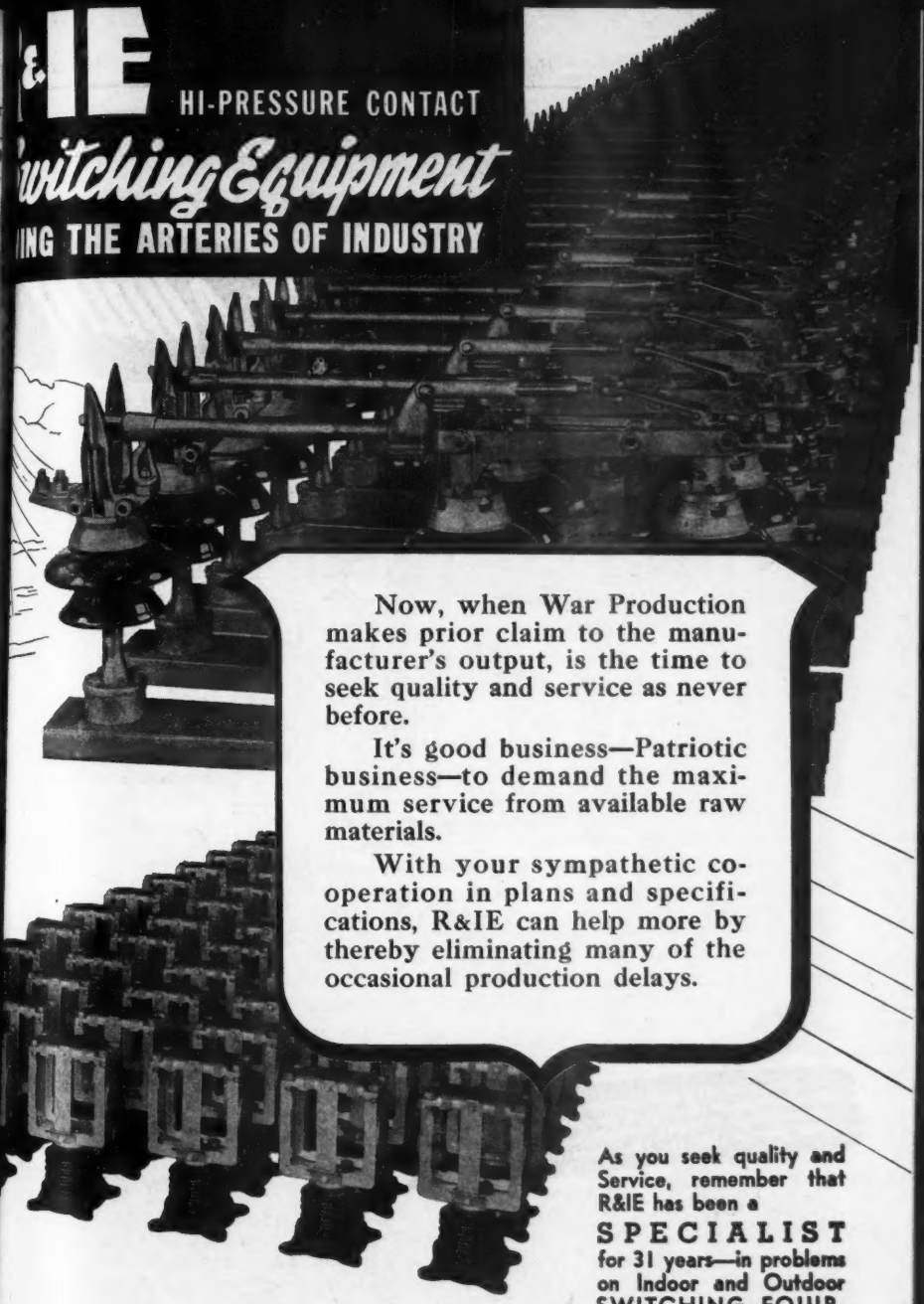
"Local government is self-government. Many of us deplore the continuing centralization of power in the state capitals and in Washington. The cure for centralization is in making self-government work. Local government must do more work and better work than it is now doing or it will gradually be eliminated."

MAURICE R. FRANKS
Editor, Railroad Workers Journal.

"We of labor must recognize and respect the God-given endowments of initiative, inventive, and executive ability. Without these there cannot be industry and without industry there cannot be workers and, needless to say, without workers there cannot be unions. To brand the possessor of these endowments as an economic royalist —an enemy of the worker—is not only unfair but un-American."

R&IE HI-PRESSURE CONTACT *Switching Equipment*

ING THE ARTERIES OF INDUSTRY



Now, when War Production makes prior claim to the manufacturer's output, is the time to seek quality and service as never before.

It's good business—Patriotic business—to demand the maximum service from available raw materials.

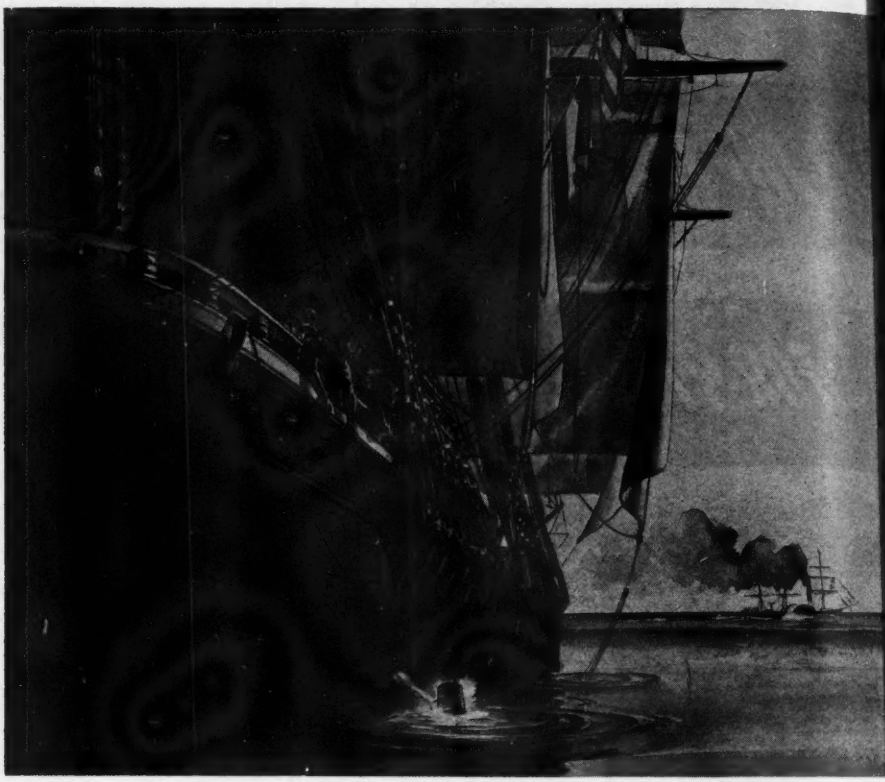
With your sympathetic cooperation in plans and specifications, R&IE can help more by thereby eliminating many of the occasional production delays.

As you seek quality and Service, remember that R&IE has been a **SPECIALIST** for 31 years—in problems on Indoor and Outdoor SWITCHING EQUIPMENT.

AILWAY *and* INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating* 100% *with the War Effort



Cast down your bucket!

Lost at sea for many days a ship suddenly sighted a vessel. From the unfortunate ship's mast a signal was given, *"Water, water; we die of thirst!"* The distant vessel at once replied, *"Cast down your bucket."* And again the signal, "Water, water, we die of thirst!" Back came the answer, "Cast down your bucket where you are." Again and again the same signal; the same reply. Finally in desperation the captain of the distressed vessel cast down a bucket. It came up full of fresh, flowing water from the mouth of the mighty Amazon River.

Cast your bucket right in your plant, right in your fields of operation. Check your flow lines and discover what your valve costs really are. Then let Nordstrom Valve engineers prove the definite savings you can make by replacing costly-operating valves. By use of Nordstrom Multiport Valves you can invariably save extra piping, extra fittings, and make one or two valves do the work of three or four. Perhaps your valve replacements have been all too frequent. Then consider the extended life of Nordstroms. They conclusively prove their economy, even when their initial cost is slightly more than that of ordinary valves. So again we say, "cast your bucket" for *lower* valve costs on all your flow lines. A signal to Nordstrom engineers is sufficient.

NORDSTROM LUBRICATED VALVES

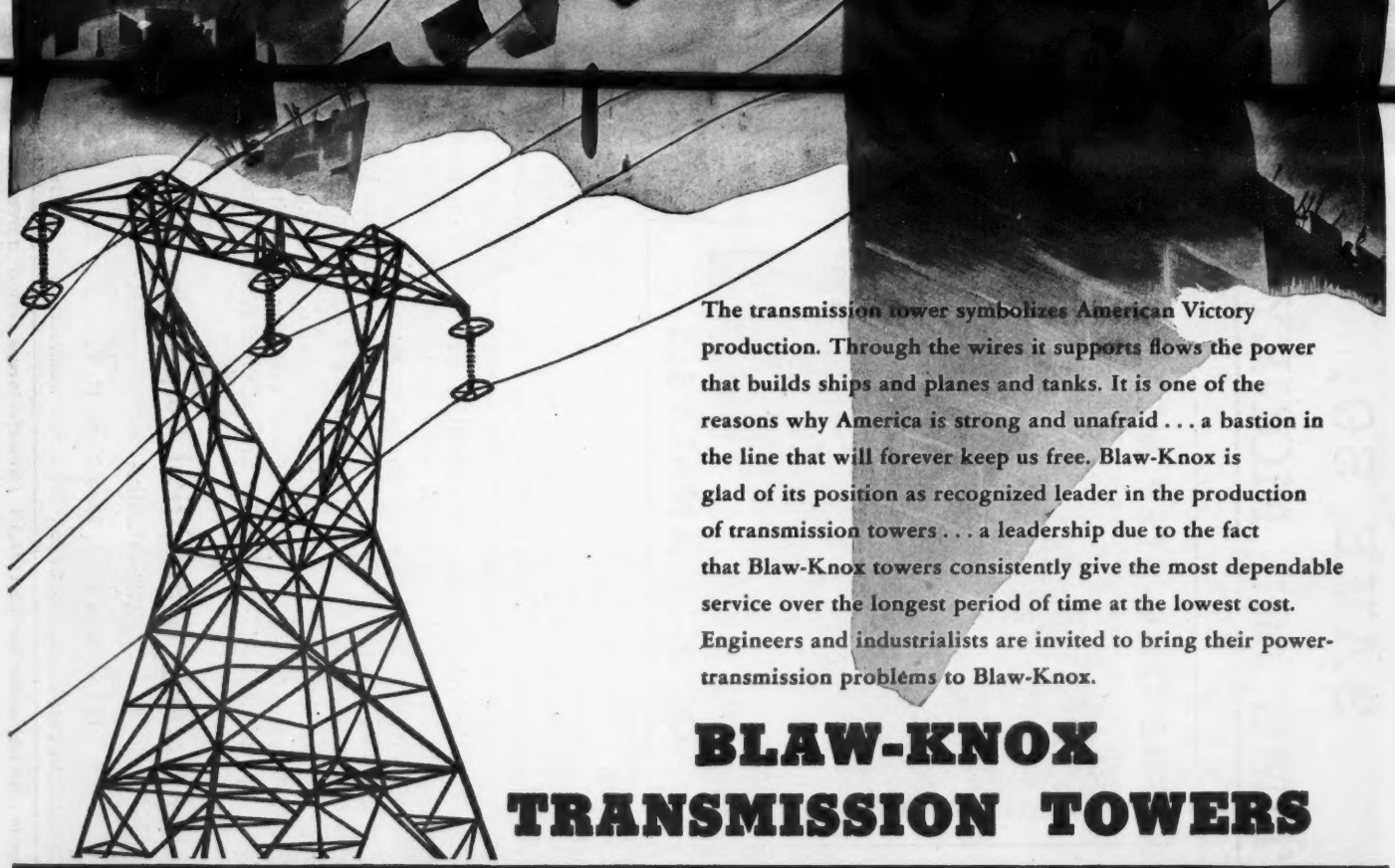
MERCO NORDSTROM VALVE CO.

A Subsidiary of Pittsburgh Equitable Meter Co.

WORLD'S LARGEST MANUFACTURERS OF LUBRICATED PLUG VALVES; GASOLINE, OIL AND GREASE METERS

Main Office: 400 Lexington Ave., Pittsburgh, Penna.

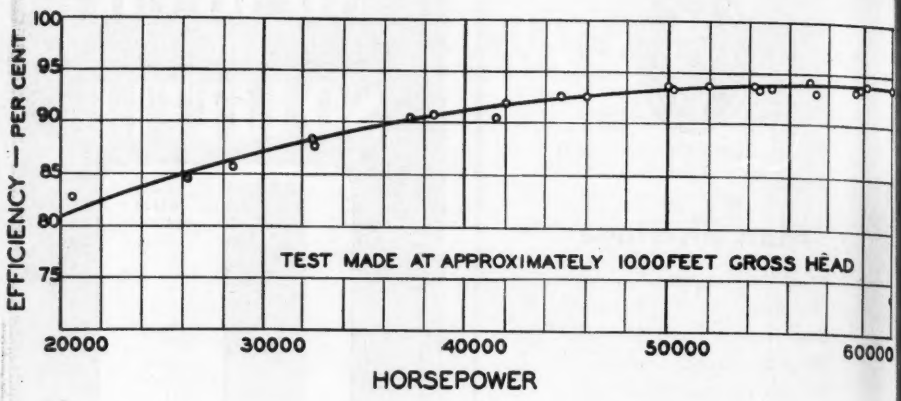
BASTION
of the
"Liberty Line"



The transmission tower symbolizes American Victory production. Through the wires it supports flows the power that builds ships and planes and tanks. It is one of the reasons why America is strong and unafraid . . . a bastion in the line that will forever keep us free. Blaw-Knox is glad of its position as recognized leader in the production of transmission towers . . . a leadership due to the fact that Blaw-Knox towers consistently give the most dependable service over the longest period of time at the lowest cost. Engineers and industrialists are invited to bring their power-transmission problems to Blaw-Knox.

BLAW-KNOX TRANSMISSION TOWERS

BLAW-KNOX DIVISION OF BLAW-KNOX COMPANY 2013 FARMERS BANK BUILDING, PITTSBURGH, PA.
NEW YORK • CHICAGO • PHILADELPHIA • BIRMINGHAM



FIELD TEST CURVE

for

60,000 H.P.—925′ NET HEAD—450 R.P.M.

VERTICAL FRANCIS TURBINE

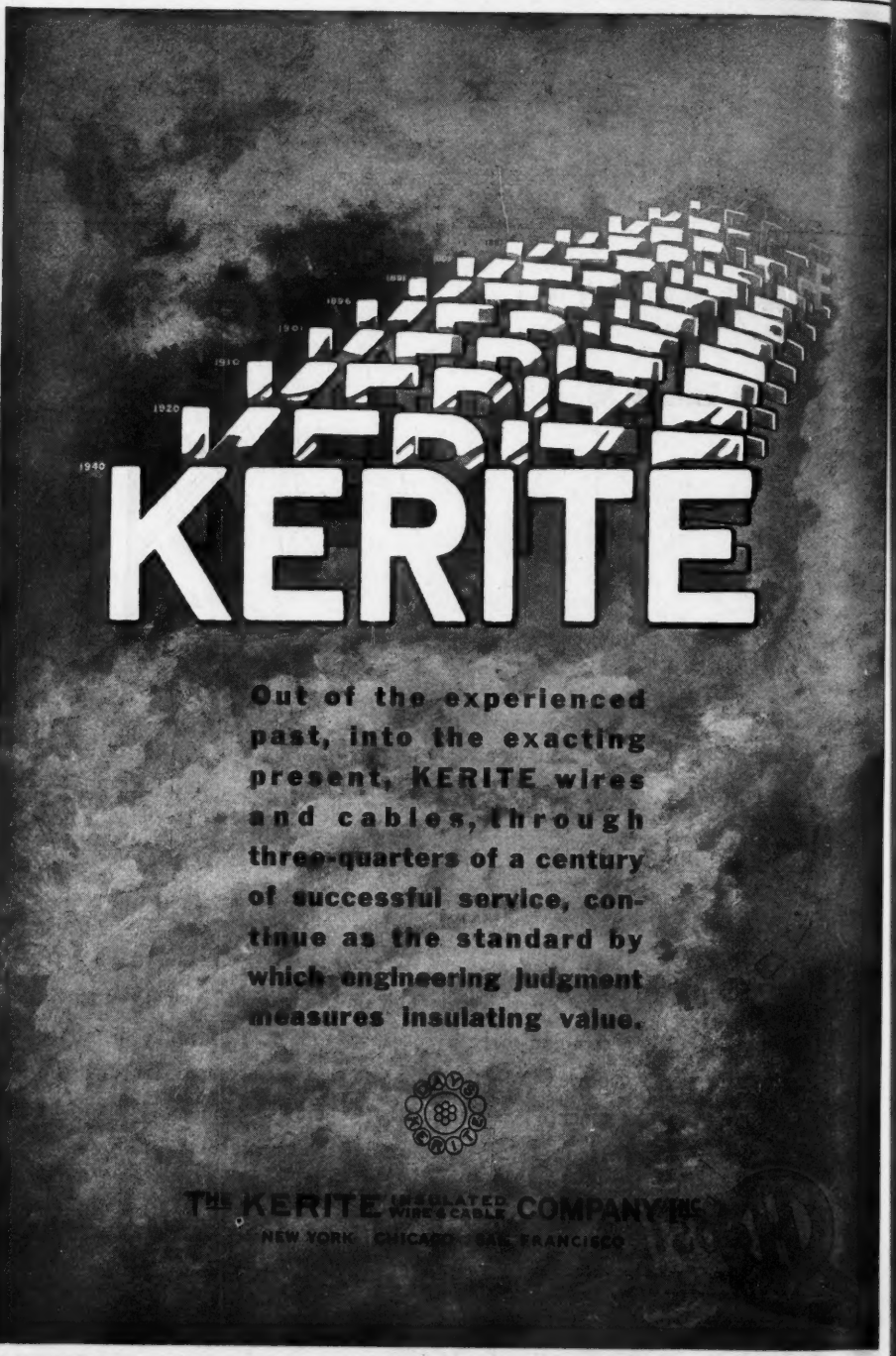
Built by

Newport News Shipbuilding and Dry Dock Company

(Hydraulic Turbine Division)

Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.



LICK THESE 3 WARTIME SHORTAGES WITH

RIC-WIL

INSULATED PIPE UNITS

RIC-WIL
INSULATED PIPE UNIT

Ric-wil Insulated Pipe Units are an essential product and are definitely aiding America's war effort. They are relieving Three wartime shortages—manpower—transportation—critical materials and currently speeding to completion many urgently needed products.

When planning distribution systems for steam, hot water, oil, hot or refrigerated process liquids, consider, in addition to the features of fast installation, economical operation and low maintenance, these timely advantages—

MANPOWER

TRANSPORTATION FACILITIES

CRITICAL MATERIALS

1 **Ric-wil Insulated Pipe Units are factory prefabricated (except at the joints). The installation is speedily accomplished, skilled mechanics and man hours required are reduced to an absolute minimum. Despite man-hours saved, the result is a permanent, low maintenance system—the best you can install.**

2 **Ric-wil Insulated Pipe Units are designed to occupy absolute minimum space. They are shipped in gondola cars of which there is no shortage. Their uniform shape and lighter weight permit compact loading and require only smallest amount of critical transportation equipment.**

3 **Sound engineering holds critical materials in Ric-wil Insulated Pipe Units to an absolute minimum—only 15% to 20% of total weight—used only where substitute materials cannot give the necessary mechanical strength required for a distribution system connecting your vital operating units.**

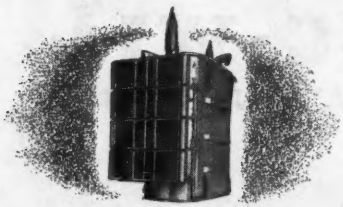
When Makeshifts Won't Do – RIC-WIL

If you desire a copy of the Ric-wil Engineering Data Book, simply write on your letterhead.

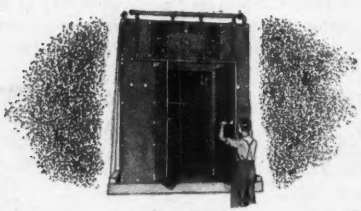
RIC-WIL CONDUIT SYSTEMS FOR UNDERGROUND STEAM
THE RIC-WIL COMPANY · CLEVELAND, OHIO
AGENTS IN PRINCIPAL CITIES

Electrical Ideas in Action!

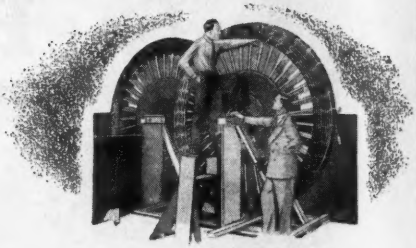
HELPING TO MEET AMERICA'S WARTIME NEEDS



TRANSFORMER CAPACITY can be boosted safely 25 per cent or more above the rated level, by adding a new forced-oil, forced-air cooling system developed by G-E engineers. Very little critical material is required for this system. As installed by one electric-service company, the additional rating was obtained for less than $1.00 per kva.



ELECTROLYTIC TINPLATING, a process which can save 60 per cent of tin as compared with conventional "hot dip" methods, is being rapidly expanded to stretch America's supply. Contributing greatly to the efficiency of the process are G.E.'s new, heavy-duty, copper-oxide rectifier units (above), and new amplidyne regulators which proportion tinplating current to strip speed.



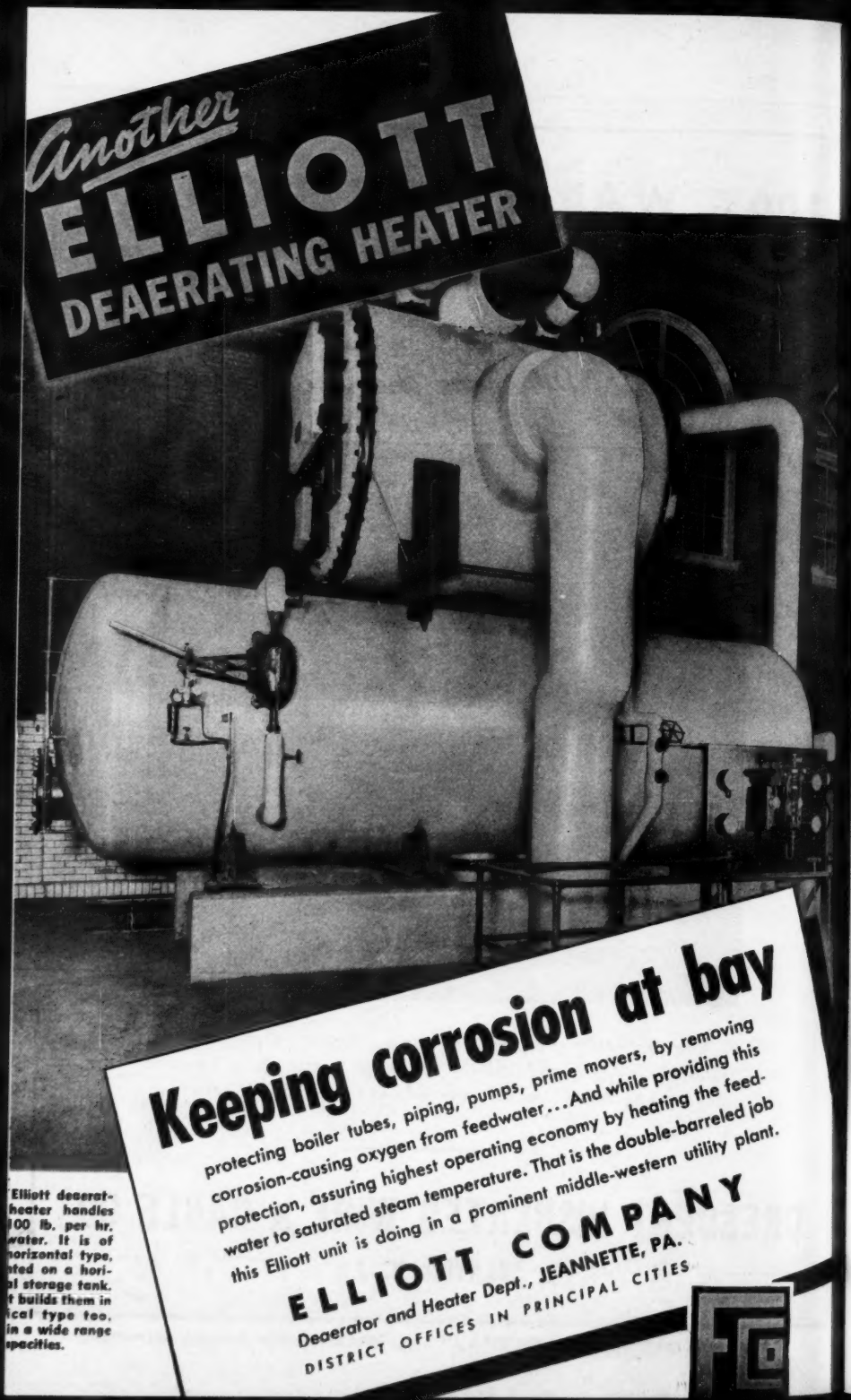
RADIOGRAPHS OF STEEL CASTINGS and other heavy metal sections exceeding 8 inches in thickness will become possible with the completion of G.E.'s new 100,000,000-volt unit for generating X-rays and high-speed electrons. Eight inches of steel is the limit of present million-volt, industrial X-ray units. With this new "induction electron accelerator," the practicality of radiographic inspection of even heavier sections can be investigated.

YOUR ENGINEERS serving industry and other users of electric energy have an important war job to do in helping to make the most of our power resources. Electrical ideas such as these, though sometimes minor in themselves, can add up BIG when widely applied—frequently saving energy, man power, and critical materials. General Electric is ready to assist in the cause of conservation by supplying further information or application aid wherever better electrical utilization can help to win the war.

The Army-Navy "E", for Excellence in the manufacture of war equipment, now flies over six G-E plants employing 100,000 men and women.

GENERAL ELECTRIC

301-14E-170



Elliott deaerat-heater handles 100 lb. per hr. water. It is of horizontal type, nted on a hori-al storage tank. t builds them in ical type too, in a wide range apacities.

Keeping corrosion at bay

protecting boiler tubes, piping, pumps, prime movers, by removing corrosion-causing oxygen from feedwater... And while providing this protection, assuring highest operating economy by heating the feed-water to saturated steam temperature. That is the double-barreled job this Elliott unit is doing in a prominent middle-western utility plant.

ELLIOTT COMPANY

Deaerator and Heater Dept., JEANNETTE, PA.

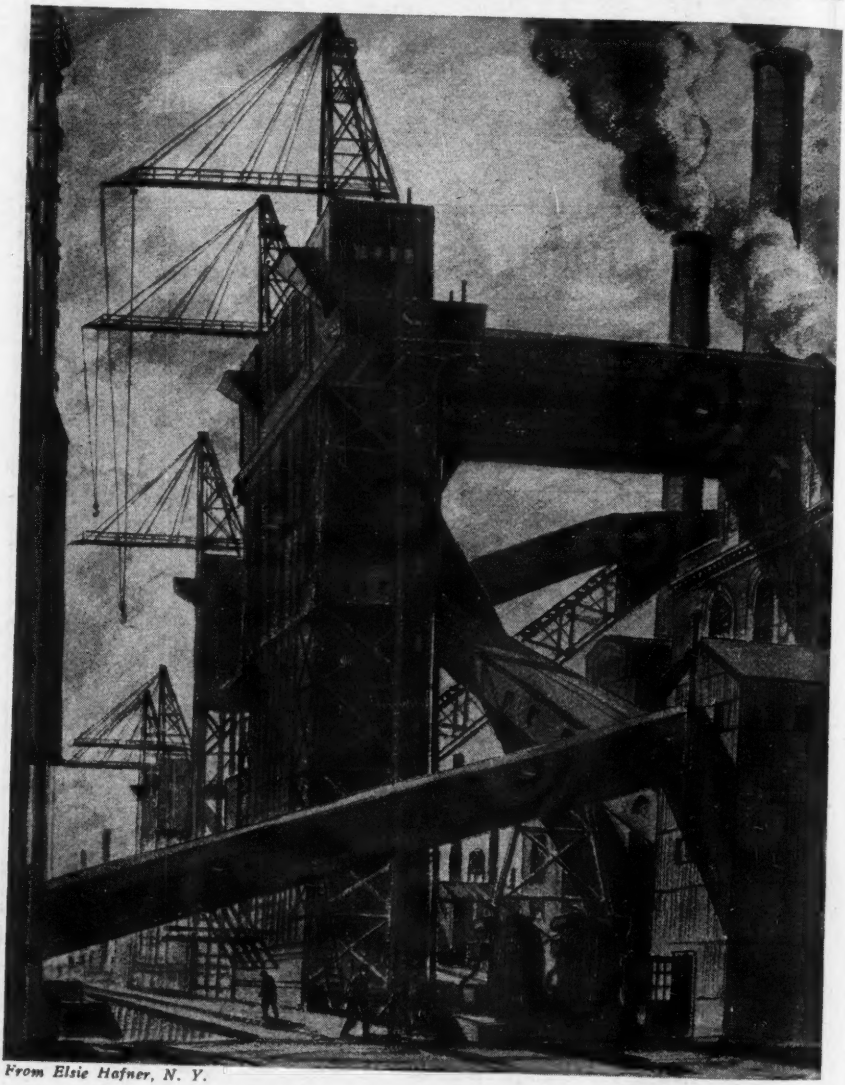
DISTRICT OFFICES IN PRINCIPAL CITIES

Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

MARCH

18	Th	¶ *Pacific Coast Shippers Advisory Board starts session, San Francisco, Cal., 1943.*
19	F	¶ *Electrochemical Society will hold spring meeting, Pittsburgh, Pa., Apr. 7–10, 1943.*
20	Sa	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 9, 10, 1943.*
21	S	¶ *Nebraska Telephone Association will hold session, Lincoln, Neb., Apr. 13, 14, 1943.*
22	M	¶ *Texas Telephone Association starts meeting, Dallas, Tex., 1943.*
23	Tu	¶ *Greater New York Safety Council starts convention, New York, N. Y., 1943.*
24	W	¶ *Pacific Northwest Shippers Advisory Board begins meeting, Portland, Or., 1943.*
25	Th	¶ *American Water Works Asso., New York Sec., starts meeting, Syracuse, N. Y., 1943.* ¶ *Southeastern Electric Exchange starts meeting, Atlanta, Ga., 1943.*
26	F	¶ *Iowa Independent Telephone Association will convene, Des Moines, Iowa, Apr. 15, 16, 1943.*
27	Sa	¶ *Missouri Association of Public Utilities will hold annual business meeting, Excelsior Springs, Mo., Apr. 16, 17, 1943.*
28	S	¶ *National Electrical Manufacturers Association will hold spring meeting, Chicago, Ill., Apr. 20–23, 1943.*
29	M	¶ *United States Independent Telephone Association will hold executives' spring conference, Chicago, Ill., Apr. 22, 23, 1943.*
30	Tu	¶ *North Central Electrical Industries will hold conference, Minneapolis, Minn., Apr. 26, 27, 1943.*
31	W	¶ *American Water Works Association, Pacific Northwest Section, will convene, Bellingham, Wash., May 7, 8, 1943.*



From Elsie Hafner, N. Y.

The Power Plant

By Gurdon Howe

Public Utilities

FORTNIGHTLY

VOL. XXXI; No. 6 MARCH 18, 1943

Can the Public Utilities Police the Peace?

The proposed employment of a truly international system of public utility enterprise controlled by Anglo-American interests might not only be an effective device for assuring peace on the European continent, but might also provide an opportunity for increasing the living standards and welfare for the millions who live there.

BY FRANCIS X. WELCH

WHEN the war is over the United Nations are going to be compelled to set up some arrangement for policing the peace of continental Europe. That much seems to be agreed upon by everyone. There is difference of opinion as to whether we should go back to the League of Nations, or prewar boundaries, or whether there should be a "long armistice" or remote-control planning or interference with the postwar internal European political pattern.

But whatever is determined upon, we do know that it is going to take some kind of a police force—a substantial police force—to subdue the fractious elements of the unhappy continent. Century-old traditional hatreds based on racial, ideological, and religious differences have been augmented by new and blazing hatreds born of the bitter war experience. They will not die down overnight. The ringing of the armistice bells will not usher in an era of good feeling whereby the Slav and the Teuton, the Gaul and the Latin, the Moslem and the Levantine,

the Celt and the Scandinavian will fall in each other's arms and voluntarily plan to abide by peace terms necessarily dictated by forces outside of the continent.

SINCE, therefore, a police force is necessary to keep the war-crazed, the vengeance-thirsty, the political opportunist, and ideological fanatic in line, the questions naturally arise: How much police force? In what form? For how long? Where? The last two questions are admittedly difficult to answer until the actual mechanics of the future peace program emerge from the conference table. But it is not too early to think over *how much* police force and *in what form.*

Obviously, some type of occupational army will have to be maintained by the allies on European soil. But there are historical disadvantages in maintaining a large army of occupation. First of all, it is expensive business. The men have to be supplied and fed in a land ravaged by war of both food and facilities for supplying it such as transportation, communications, and so forth. To the extent that the financial burden for such is placed upon the conquered peoples, they will suffer and grumble and make harder the task of converting them to active coöperation with the new plans for permanent peace. To the extent that the allied countries bear such a burden on both their own taxes and man power, they also will grumble and grow more unwilling to contribute to the necessary policing of the peace.

Furthermore, we might as well realize the hard fact that police force occupation may be necessary not only in the countries of our declared Axis enemies, but also *in friendly but troubled conquered areas* which have harbored and will continue to nourish local factional hatreds and disputes.

It is not, perhaps, tactful to stress such a condition at this time. But realistic political students foresee the possibility of a clash of Communistic-Capitalistic elements all over Europe following the defeat of the Axis, unless the United Nations agree on some program for preventing a recurrence of the bloody Bela Kun episode which followed the World War I. We are already witnessing warnings along this line in the factional outbreaks among the Yugo-Slav guerillas and among the French politicians concerning North Africa.

NEEDLESS to say, the fighting men of occupational armies do not take kindly to the job. A few young, adventurous spirits might welcome the new experience in foreign lands. But the veterans of our American occupational armies of 1919 will readily testify that most of the men were anxious to get back home after exhausting war experience. There was little enjoyment in duty among unfriendly conquered civilian populations who regarded them as intruders.

Admitting, therefore, that some kind of a national occupational army will be necessary, how can its cost and size be kept down without endangering the very objective of such occupation—the policing of the peace? For our answer we can turn to the experience of the present war. How were these European countries conquered in the first place? The answer is almost always the same: by the seizure, destruction, or control of their public utilities.

When the legions of Hitler invaded Norway, when the first Nazi ground troops began their invasion of civilian centers of population in Holland, Belgium, and France, it was always to the public utility plants and facilities that the paratroopers, the sappers, and the panzers first hastened. The radio stations, the electric power plants, the gas holders, and all other forms of communications or transport facilities were the first targets of hostile actual occupation—after the bombers had done their dirty work of "softening the terrain."

The German generals knew that the hand that controls the switchboard has a more powerful influence over the lives and destinies of a modern metropolis than a regiment of fingers on machine gun triggers. Cut off a city such as New York from its lifestream of utility services—power, water, and gas—and in a single hour it will be paralyzed. Its great skyscrapers will turn into lifeless mausoleums. Prolong this condition for a mere hundred hours and the city becomes a suffering cesspool of death and putrescence. Held *incommunicado* from the outside world by broken telephone and telegraph lines, silenced radio transmissions, immobilized trains, ferries, etc., such a city would fall like a ripe plum into the hands of a relatively small invading army.

The Reichwehr knew all this. Indeed Nikolay Lenin, a quarter of a century ago, said that a handful of workers, organized for the "revolution," in such key positions within a besieged city, meant more than columns of armed troops attacking from the outside. In short, Lenin recognized that control of public utility service is like a "hand on the throat" of modern society. That society can be enslaved or subdued without firing a shot or spilling a single drop of blood.

HERE then is our answer. Central Europe's utility services and all of its facilities—gas, water, electric power, communications, and transportation—should be taken out of the hands of political governments or commercial organizations responsible to such political governments. They should be placed under the control of an international board answerable to whatever international tribunal, such as League of Nations, might be set up to enforce the peace.

Key positions should be occupied by English, American, and other nationals of unquestioned loyalty to the United Nations. That goes for engineers, plant superintendents, executives, and

¶ "WHEN *the legions of Hitler invaded Norway, when the first Nazi ground troops began their invasion of civilian centers of population in Holland, Belgium, and France, it was always to the public utility plants and facilities that the paratroopers, the sappers, and the panzers first hastened. The radio stations, the electric power plants, the gas holders and all other forms of communications or transport facilities were the first targets of hostile actual occupation . . .*"

custodians of supply and construction, repair and maintenance.

Implementing this truly international set-up for public utility services of Europe, there should be established grid systems of electric power pools, similar to those now operating so successfully in southern California, Tennessee valley, and Great Britain. Strategic switching and transmission centers should be established and protected by occupational forces in such a way that *upon a given signal the electric power services for the entire area could be cut off or if necessary destroyed.* Any revolt, under such circumstances, could be squelched at the first outbreak. A nation or region trying to fight, or produce weapons to fight, without electric power, in this day and age, is like a man trying to race with his feet in a sack.

The same thing goes for other forms of utility services, especially communications and transportation. There is no question about the engineering feasibility of the realignment of continental utility facilities along such channels of international control. It can be done. But the question immediately arises whether it would be economically feasible. Would it entail more expense? Would it be an added burden in terms of rates for service? Or in terms of adequacy of the service itself?

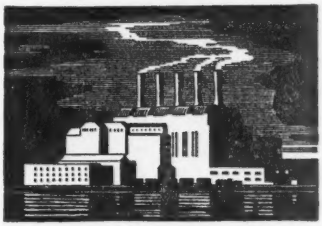
To appreciate the fact that *such international control would be a positive improvement in the economics of European utility operation,* aside from political considerations, it is necessary to review briefly the background of the establishment of European utility facilities.

In contrast with the experience in the United States, where modern public utility service was practically born, and where most of its accepted technological improvements were developed, Europe's utility services, from their earliest years, have trended toward public ownership. Public ownership—in Europe—could take no other form than strongly *nationalized* control. The soulless corporation cannot (as the reformers have so often told us) be a truly national citizen of any state. But by the same token, public ownership, whether municipal or federalized, cannot escape the inexorable domination of a strongly nationalistic spirit.

The French railway system was inevitably French from the top executive to the humblest switchman. The same for the German railway system, which incidentally was made part of the program for paying off reparations to the Allies by the Young Plan after the last World War. The same for the Italian railway system. Compare this with such international private utility organizations as the International Telephone & Telegraph Company which operated efficiently and indiscriminately in prewar Spain, Rumania, and Greece, as well as a dozen other places throughout the globe.

There follows a rough tabular list of public utility ownership in prewar Central Europe. (See opposite page.)

One interesting fact emerges from a consideration of these tables; that is, *public ownership and operation of utility facilities in prewar Central Europe was much more dominant in the Axis countries than in those nations which were overrun or rallied to the side of the United Nations.* This was no mere accident. It was simply



OWNERSHIP OF GAS UTILITY PLANTS
IN PREWAR CENTRAL EUROPE

Country	*Number of Plants*	*Private Ownership*	*Public Ownership*	*Mixed Ownership*
Czechoslovakia	85	33	52	—
France	700*	600*	100*	—
Germany	899	86	755	58
Italy	186	146	40	—
Switzerland †	85	—	almost completely	—

*Approximately
†In 1930

OWNERSHIP OF ELECTRIC UTILITY PLANTS
IN PREWAR CENTRAL EUROPE

Country	*Number of Plants*	*Private Ownership*	*Public Ownership*	*Mixed Ownership*
Czechoslovakia	220	196	24	..
France	—	completely	—	—
Germany *	614	181	340	93
Italy	700	659	41	—
Switzerland †	192	67	85	40

*In 1929
†In 1930

EXTENT OF STATE OPERATION OF
RAILROADS IN PREWAR CENTRAL EUROPE

Country	*Percentage*
Czechoslovakia	92.77
France	100
Germany	100
Italy	100
Switzerland	100

EXTENT OF STATE OPERATION OF
TELEPHONES IN PREWAR CENTRAL EUROPE

Country	*Percentage*
Czechoslovakia	88.89
France	100
Germany	100
Italy	none
Switzerland	100

a reflection of the intense nationalistic —one might almost say chauvinistic —emotion which inspired the Axis peoples toward their conceptions of world conquest, racial superiority, and the legend of the Herrenvolk.

In prewar European democracies, this mischief-making nationalistic spirit was not so strong. Peoples of those countries were content to have their strategic services taken over by commercial corporations, entirely on the basis of good service and fair rates and without worrying about political implications.

What was the result of this strongly nationalistic development of utilities in Europe? Utility services which were, in large part, the fruits of American inventive geniuses such as Edison, Bell, Stanley, and Westinghouse were turned into political servants. It was strictly a third-rate utility performance at high cost. It was accessible only to the rich and the upper bracket *bourgeoisie*. It resulted in a crazy-quilt pattern of isolated and inefficient utility establishments which "Balkanized" the nations of Europe. This helped, more than the old tariff barriers, to divide and segregate these Europeans from a better understanding of each other. For example, in prewar Europe a visitor in Paris could not telephone a Mediterranean city, only 400 miles away, without having his message carried over the lines of six different national systems, subject to six different tax levies, and like as not, subject to the surreptitious interruption of six different secret police.

A RAILWAY traveler from Berlin to Moscow had to stop at the old Latvian border and change trains because of a different size track. In the city of Budapest the same radio receiving set or electric vacuum cleaner or refrigerator, if it had been used on the Buda side of the Danube, could not be used on the other side because of differences in voltage and cycles. And so were the unhappy peoples of prewar Europe systematically defrauded of the full advantages of utility services by their former political controls.

Such a system would not be tolerated in America. First of all, we know better. The poor European through his ignorance expected nothing better. Again, America is not divided up into small countries about the size of Indiana, each with its own Army and Navy. We have only to consider the universality of American electrical appliances, the ease with which we place a long-distance telephone call from New York to San Francisco, to realize the true benefits, *economically,* based on continental wide standards.

Government telephone service in prewar France became an international joke among American tourists. How different it would have been if there were such a thing as a "Bell Telephone system of Europe." It is apparent that public ownership of utilities as it has developed in its birthplace—the European continent—must be destroyed as an enemy of peace.

An easy way to do this is to use the private corporation which knows no boundaries, nor politics, nor race, color, creed, or previous condition of servitude. International development of the electric power industry in Europe would integrate the resources of that continent in such a way as to lower the cost of power and to make it available to the lowest classes who never

hoped to enjoy such service under the old set-up.

Imagine an interconnected system that would fuse the hydroelectric production of the Alps and Pyrenees to the South, with the coal-fired generation possibilities of the Loire and Ruhr valleys. Imagine broad, free highways of standard gauge railroad tracks and standardized railroad equipment. It would bring true the late Kaiser Wilhelm's dream of a de luxe express train from Berlin to Bagdad—but not under German control.

EVIDENCE that others are thinking along this line is contained in the press report of an interview given by Dr. Arthur E. Morgan, former chairman of the Tennessee Valley Authority, in Pittsburgh, Pennsylvania, on January 30, 1943. Dr. Morgan, president emeritus of Antioch college, stated that a prewar tour of the Balkans, plus his five years' experience with the TVA, convinced him that a series of dams on the Danube, which runs from Switzerland through Austria, Hungary, Yugoslavia, and Rumania, would serve a fourfold purpose: (1) provide employment, (2) supply electric power, (3) reconstruct those nations, (4) bring their people closer together.

Dr. Morgan proposed that the United States appropriate a billion dollars to build such dams. He also proposed that the project be administered by an "international board" which would permit as many different nationalities as possible to work together on each job.

"If an engineer were a Serbian and his rodman a Rumanian, they'd soon learn that one wasn't poison to the other as they worked toward the same goal," Dr. Morgan said.

This writer agrees 100 per cent with Dr. Morgan on the advisability of obliterating the lines of nationalistic political utility control which heretofore has helped to balkanize the minorities of Europe. He differs only as to the device for the accomplishment of such a plan. Presumably through an "international board" Dr. Morgan would have some sort of official body upon which there would be formal representation by various governments and similar political supervision.

This is likely to prove a cumbersome method of administering what is essentially a business enterprise. It might also prove embarrassing to the nationalities, if, as, and when, the board would get into international difficulties, which are to be expected in the

"... the postwar reconstruction period may indeed mark the Iliad of private enterprise—the historical balancing point—the fateful fork in the road. If our course is to the left, private enterprise may well be buried under the increasing power and weight of state socialism. If our course is to the right, the American way of life may not only be vindicated but its blessings may be spread to places which have known them not, but which need them even more than we do ourselves."

life of any commercial enterprise. Why not take our cue from Great Britain which, since the days of Clive of India, has never hesitated to make use of the handy and convenient unofficial private corporation to carry out her usually successful imperialistic enterprises? Indeed, in India today and in other parts of the British Empire, the Bank of England has demonstrated a remarkable faculty for pulling corporations out of the hat whenever convenient and putting them back in the box when their function has been fulfilled. We could learn a great deal in this respect from the Old Lady of Threadneedle Street.

FURTHERMORE, the proposed international control of European utilities might well be made a vehicle for exporting American talent, products, capital, and prestige. Standardizing the gas and electric systems of Europe on a scale comparable with America would open a vast new market for the many appliances which we normally manufacture in the United States but which, for obvious reasons, could not heretofore be widely sold in Europe.

Many of our great public utility holding companies, which are being broken up by the Securities and Exchange Commission under the provisions of the Holding Company Act, are beginning to find themselves "money poor." They have vast sums entrusted to them for investment at a profit, and no place in this country where it can be so invested. Conceding that there would be legal difficulties under the Holding Company Act, an internationally approved plan for rehabilitating the utility system of Europe would provide a heaven-sent opportunity for the investment of American capital abroad, assuming that suitable guaranties could be arranged.

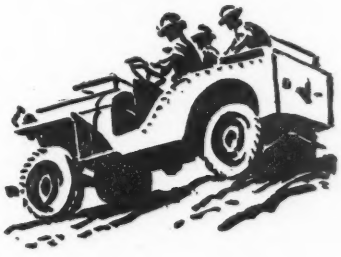
And if this were done, it would necessarily follow that the exportation of American capital would carry with it American genius in the form of engineers, executives, technicians, etc. As the cynical Mr. Dooley once observed: "Oi dunno whether th' Constitooshun follows th' flag; but Oim pretty shure that th' Yankee will follow th' American dollar to th' end of th' earth!"

Finally, the requirements of *post bellum* reconstruction in Europe present a golden opportunity for private enterprises not only in America but all over the world, to stage a comeback —to go on the offensive. Napoleon Bonaparte, and more recently Knute Rockne, demonstrated the virtue of the trite maxim that the best defense is an offense. Private enterprise in America, which has brought forth the greatest civilization in world history, furnishing the highest standard of living for the greatest number of people, has been under continuous attack by socialistic propaganda having its principal source in Europe for the last quarter century. Here, then, is a chance for private enterprise to go into the spawning place of these revolutionary doctrines and show them up. It can show them up simply by doing a better job of public utility service under the traditional American system, than prewar Europeans have done under the old system of state ownership.

IN fact, unless this opportunity is seized by capital enterprise and those who believe in it, the *post bellum* period may well also provide an opportunity for devastating advances by the followers of state socialism. Today,

when American business enterprise is straining every effort to win the war, there are many who would destroy the profit system working in the walls around Washington and other capital cities of the United Nations. They are working not so much for the winning of the war as for the domination of the peace. They are planning great Utopias in which the American traditional system of free enterprise will have small if any substantial place.

Viewed in this light the postwar reconstruction period may indeed mark the Iliad of private enterprise—the historical balancing point—the fateful fork in the road. If our course is to the left, private enterprise may well be buried under the increasing power and weight of state socialism. If our course is to the right, the American way of life may not only be vindicated but its blessings may be spread to places which have known them not, but which need them even more than we do ourselves. In other words, why not take the view that the humblest European has just as much right as we have to the benefits of American standards of public service—gas, electricity, telephone, and the rest of it. Why not give it to them —in the American way.



Need for Coördinated Planning

"Our vital need is one of coördinated planning, not necessarily by a superman with a fancy title or an alphabetical incumbrance, but by a few heads together discussing the situation both from the production and the military sides, and with fewer public announcements as to how great we are going to be in the field and in the shop.

"When the heads are close together, let the German ratio be considered and let it be realized that no German division is compelled to move further by land than we can move in our own land from coast to coast, and that Germany can supply her troops mostly overland. Let it be considered further that Japan has only to operate in her own backyard, whereas we have not only an unprecedented production job but a transportation job never before attempted in the history of the world."

—Alfred C. Fuller,
President, Manufacturers Association of Connecticut.

The Relation of Capital to Utility Rate of Return

A typical utility structure is comprised of debt capital (in the form of bonds, notes, etc.), preferred stock, and common stock. Each investment has a different function and places a different demand on the requirement of a sufficient rate of return to assure continued capital for devotion to public service. This article attempts to formalize the computation of these various requirements in determining the rate of return.

By MALCOLM G. DAVIS

The rate of return necessary to maintain financial stability and to provide for the continued growth of a public utility operation is measured by the over-all requirements of the several classes of capital involved in the particular enterprise. This does not mean, however, that the over-all return, or net income to be allowed a given operation by application of the over-all *rate of return* to rate base value, must provide for the earnings requirements of an overcapitalized financial structure. To do so would offer a strong incentive to overcapitalization with the result of partial or total nullification of the effectiveness of regulation.

Two bases are available to the analyst for the determination of the rate of return to be allowed upon any particular operation and capital structure. Both methods have their specific applications as well as their limitations, and the choice of the method to be adopted must be taken after consideration of the pertinent factors involved in the determination of rate base, etc. The statistical techniques used in establishing either of the two sets of values are essentially the same.

One of the two general methods available for establishing the magnitude of the fair rate of return allowance for a specific operation is to base the determination upon current market conditions, adjusted to circumstances substantially similar to those existing in the instance of the system under consideration. In effect, this entails the development of current cost of money rates for new capital in each of the several capital categories. Because of probable differences in the types and proportions of the various classes of securities in the actual capital structure and those required under current market conditions, this proce-

dure generally results in establishing a hypothetical capital structure which may differ materially from that actually existing. This method is similar, in some respects, to the reproduction cost new method of establishing rate base value, although it is more strictly analogous to the generally discredited substitute plant method. Solely from the standpoint of maintaining consistency in the treatment of economic factors it is obvious that the current market or reproduction new method of establishing rate of return requirements is susceptible of application only to rate base values established at current price levels.

THE second method of determining the magnitude of the fair rate of return involves full recognition of basic requirements resulting from past commitments, at least in respect to that portion of the capital structure comprised of fixed income securities. A corporation's capital structure, at any particular time, is the end result of certain past actions which, in general, may be presupposed to have been taken after the exercise of reasonable managerial judgment and, generally, after explicit approval by a regulatory body. Certainly where the rate base is to be established on the basis of historical cost it is only equitable to use the same historical criterion in arriving at a determination of the necessary fair return. In the further discussion of rate-of-return reference will be restricted solely to what may be termed the historical rate-of-return basis, although the same statistical methods may be followed in determining the current market, or reproduction rate of return.

Previous reference has been made to the fact that the total earnings necessary to maintain an existing capital structure may not be the same as the earnings allowance resulting from the application of the established reasonable *rate-of-return* ratio to the rate base, or value upon which a return may properly be earned.

IN determining the historical cost rate, recognition must be given to the actual net rates paid by the corporation for the various classes of fixed income capital, *i.e.,* bonds, debentures, preferred stock, etc. On the other hand, equity capital was placed in the enterprise in anticipation of future earnings and the proper gauge of the necessary return for this class of capital is measured by the current market evaluation of earnings obtained under substantially similar situations. It is necessary to assure equity capital of a return commensurate with current market conditions in order to provide the requisite incentive for the investment of new capital in the enterprise; this consideration is particularly important in an expanding business such as that represented by the public utility industry.

The over-all *rate-of-return* ratio established on the historical basis is the sum of the average net rates required by each class of capital, weighted in proportion to the percentage that each bears to the total net capitalization of the enterprise. The resulting rate-of-return ratio, applied to the historical rate base, establishes net earnings available for return on total capital. Where overcapitalization exists, earnings determined in this manner may be deficient in meeting the theoretical requirements of the capital structure. In such instances actual earnings on equity

capital would be subnormal and, in aggravated instances, the earnings available for preferred stock might be deficient. Where such conditions exist the penalty of overcapitalization falls first and in greatest degree upon equity capital.

THE elements to be considered in the determination of the cost-of-money rates for the several classes of fixed or semifixed income capital involve more than a determination of the gross coupon, or specified dividend rates of the respective securities.

As these factors relate to debt capital, full consideration must be given to the existing balance of unamortized discounts allowed, premiums received, call premiums paid and expenses paid for refunded, refunding, and new bond issues in establishing net capital funds obtained by the corporation from debt capital; similarly, the total annual cost of debt capital involves both interest and charges for the amortization of debt expense, etc. The over-all cost rate of debt capital is then expressed as the ratio between the net total of funds received by the corporation, from capital of this type, and the annual cost of debt service.

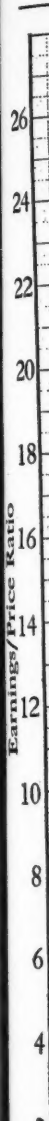
Obviously, annual expenditures for retirement, or amortization of debt capital, where made either as a matter of policy or in accordance with the requirements of a mortgage indenture, are not to be considered as part of the annual cost of debt service, as defined for the purpose of this discussion.

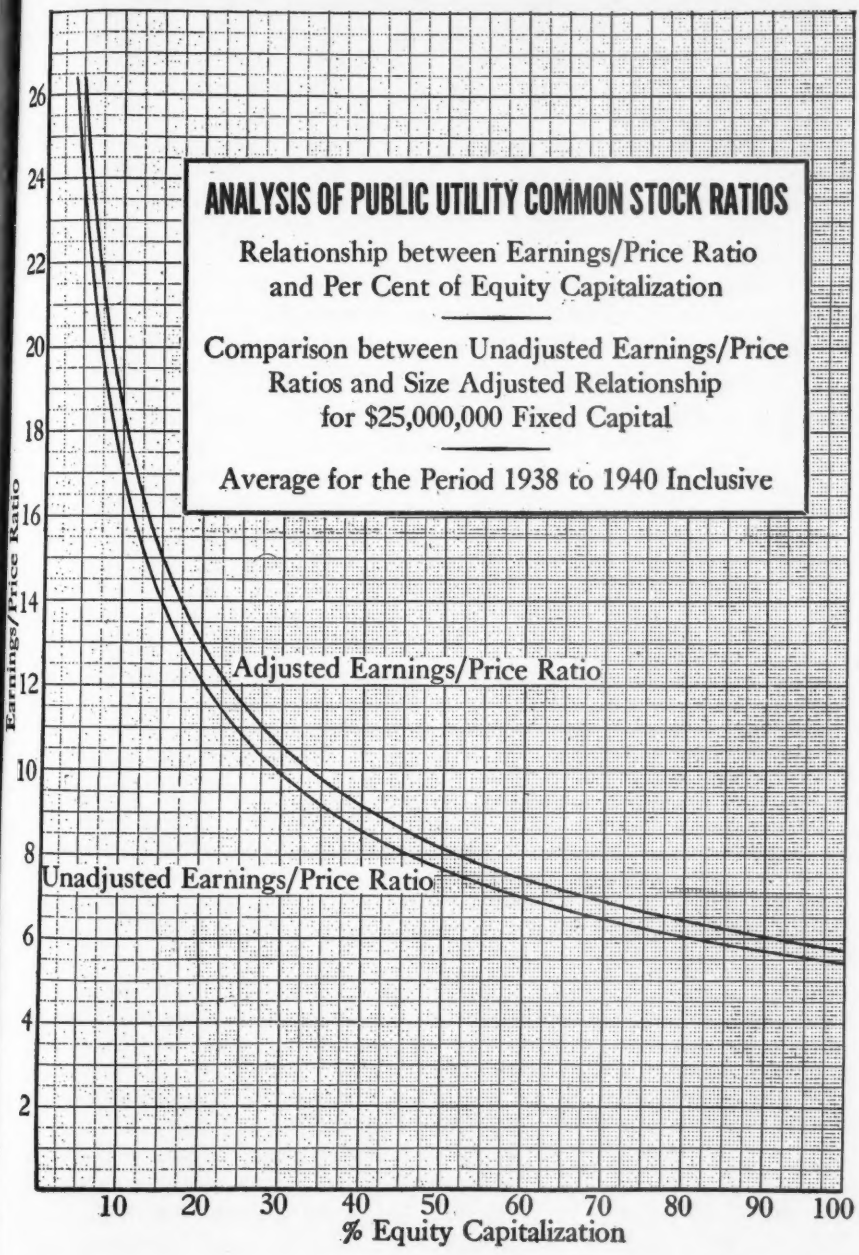
An analogous procedure must be followed in the determination of the over-all cost-of-money rate for preferred stock capital. Here, again, consideration must be given to the unamortized residual of expenses, discounts, or credits involved in both present issues and those that may have preceded the ones currently contained in the capital structure.

SEVERAL elements control the cost-of-money rate for common stock, or equity capital. Basically the return rate is a function of (a) the type of business; (b) the factors affecting the particular operation, such as location, economic status of market area, character of management, size, etc.; and (c) the proportion of earnings available to equity capital in relation to total earnings. The latter, which may be termed the *leverage factor* of equity capital, may be measured directly by the percentage of total earnings available to equity capital, or indirectly by the percentage that equity capital bears to total capital in the enterprise.

Where rate of return is to be determined, which in turn will establish total earnings and, concomitantly, the proportion of such earnings available to equity capital, it is necessary to use the relatively fixed ratio of percentage

¶ "IT *is necessary to assure equity capital of a return commensurate with current market conditions in order to provide the requisite incentive for the investment of new capital in the enterprise; this consideration is particularly important in an expanding business such as that represented by the public utility industry.*"




ANALYSIS OF PUBLIC UTILITY COMMON STOCK RATIOS
Relationship between Earnings/Price Ratio and Per Cent of Equity Capitalization
Comparison between Unadjusted Earnings/Price Ratios and Size Adjusted Relationship for $25,000,000 Fixed Capital
Average for the Period 1938 to 1940 Inclusive
Earnings/Price Ratio
26
24
22
20
18
16
14
12
10
8
6
4
2
Adjusted Earnings/Price Ratio
Unadjusted Earnings/Price Ratio
10
20
30
40
50
60
70
80
90
100
% Equity Capitalization

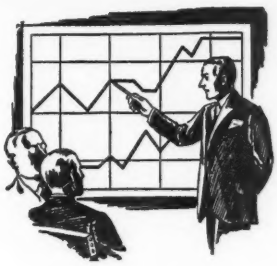
of equity to total capital as the gauge of leverage factor. In the event that percentage of earnings should be used as the leverage factor gauge, and an adjustment of over-all earnings resulted from the rate-of-return determination, it would immediately change the basic leverage factor ratio with a corresponding change in the theoretical money cost rate for equity capital. The result would be a series of calculations which would approach an ultimate limiting value. Such a series of calculations is avoided by measuring leverage factor by the relatively stable ratio of capitalization percentage.

THE only true gauge of the return requirements of equity capital is that established by the investing public through the medium of stock sales and purchases. While the number of public utility operating company common stocks in the hands of the public is relatively limited, there have been a sufficient number during recent years to make possible a fairly comprehensive analysis of the rate-of-return requirements of this class of capital. In order to provide a basis for the determination of the characteristics of equity capital return requirements there can be developed a comprehensive analysis of a comparatively broad group of selected public utility operating company common stocks.

The rate of return to be allowed on the equity portion of the total capitalization of a particular operation should be a function of the current level of the market evaluation of utility equities, adjusted to bases of size and leverage factor comparable with the particular situation under review.

As an illustration of the market evaluation of rate-of-return requirements of public utility operating company equities, several graphical analyses of pertinent relationships have been made by the writer based upon a detailed study of a number of utility common stocks. The study covers the years 1938 to 1940, inclusive, and is restricted to operating utility companies whose major source of revenue is electric service. The operating companies canvassed had reported book fixed capital ranging from less than $5,000,000 to more than $1,000,000,000, and annual operating revenues ranging from approximately *$1,800,000* to more than *$250,000,000*. While there were additional operating properties whose common stocks have been publicly held during recent years, several of these companies were excluded from the study because the record of statistical data did not span the full 4-year period studied, or because wide variations from a reasonable norm indicated the existence of special circumstances requiring their elimination from any group analysis.

THE first problem to be considered in a study of this type is the basis upon which the relationships are to be determined. Extensive study of the problem indicated that the most effective gauge of the evaluation placed upon a particular stock by the market or investing public is obtained from an average of the twelve monthly high and low prices. This procedure was the one adopted in the analysis and may be assumed to give reasonable weighting to the effect of all factors which contributed, over the period of a calendar year, to the determination of the market value of any particular equity.



Return for Equity Capital

"THE only true gauge of the return requirements of equity capital is that established by the investing public through the medium of stock sales and purchases. While the number of public utility operating company common stocks in the hands of the public is relatively limited, there have been a sufficient number during recent years to make possible a fairly comprehensive analysis of the rate-of-return requirements of this class of capital."

The average market values thus determined were then related to the net earnings per share available for equity capital. The resulting earnings/price ratios established the average over-all rate of return required by the investing public from a particular equity during the year under consideration. In some instances, where conditions change rapidly during a particular year, this procedure may result in some error; in general, however, it is substantially correct.

As indicated, the rate-of-return requirement of equity capital, *i.e.*, common stock, is a function of the risk element which, in turn, is directly related to size and type of operation, its stability and future earnings ability, and the degree of *leverage* affecting the flow of earnings to equity capital. In general the elements of size and leverage are the only two that are susceptible of explicit statistical determination. Rate-of-return requirements of equity capital fluctuate from year to year, depending upon economic conditions and other factors which influence the investing public.

THE over-all effect of economic conditions and other factors upon the markets for utility equity securities was clearly demonstrated by the trend of the average of the earnings/price ratios of these nineteen selected equities. The variation in the over-all rate-of-return requirements of equity capital reflects not only changes in basic economic conditions but also the effect of various factors that are peculiar to the utility industry, as a whole, as well as to individual systems.

Violent fluctuations in earnings/price ratios developed in several specific instances. These fluctuations were

found to be due to conditions peculiar to the particular operations and, because of these special conditions, these individual stocks were omitted from the determination of the normal earnings/price ratio relationships developed in this analysis.

It is clear from a study of 25 operating companies for the year 1940 that there exists a definite relationship between leverage factors, or equity capital ratio factors, and the earnings/price ratios for the group of public utility common stocks canvassed.

THERE exist a number of causes for variations in the rate-of-return requirements of equity capital, in addition to the basic relationship of leverage factor. In most instances these other controls are not susceptible of statistical determination and result in individual deviations from a normal or average relationship which in the aggregate are self-compensating if a sufficiently large number of items form the basis for the analysis. Hence, where a sizable number of individual relationships are available it is possible to develop, by means of standard mathematical procedure, the average or normal relationship for the group of discrete values under analysis.

One other factor that is reasonably susceptible of statistical determination is that of size of operation and its effect upon earnings/price ratios. Because leverage factor exerts the major control over earnings/price ratios, the degree of correlation between the latter and the element of size is not so high as that which exists between the two major variables. However, there exists a fairly well-defined relationship between size, as measured by total fixed capital, and earnings/price ratios. This relationship permits adjustments of the individual earnings/price ratios of the various common stocks, included within a particular study, to the basis of the size of any company under analysis and the consequent determination of an earnings/price *versus* leverage factor relationship that is applicable soley to the operations being considered.

THE over-all historical rate-of-return allowance, representing a determination of the fair return to be allowed on the historical cost rate base, represents the weighted average of the cost-of-money rates established for each of the several classes of capital included in the capitalization of the corporation under specific review. Under this procedure the net cost-of-money rates for each class of capital are weighted in proportion to the percentages of the respective types of capital to total capitalization.

In order to illustrate the general method there is developed in the accompanying tabulation a hypothetical calculation, based upon an assumed, although typical, capital structure, with equity capital return determined from the "size adjusted" earnings/price ratio *versus* leverage factor relationship of the chart on page 345. This example assumes net debt capital in the amount of $11,468,000, comprised of $12,000,000 par value of bonds less $532,000 of unamortized debt discount and expense, carrying an annual coupon rate of 4¼ per cent plus a charge of $25,000 per year of amortization for debt discount and expense; preferred stock with a stated dividend rate of 5½ per cent and a par value of $4,000,000, which is assumed to have been sold at

Class	Capitalization Net in Each Category	% Total	Cost-of-Money Nominal Rate	Cost-of-Money Actual Net Rate	Weighted Return Factor
Funded Debt	$11,468,000	49.6	4.25%	4.66%	2.32%
Pfd. Stock	3,848,000	16.7	6.00	6.23	1.04
Com. St. Equity	7,772,000	33.7	—	10.00*	3.37
Total	$23,088,000	100.0	—	—	6.73

NOTE: *Taken from adjusted relationship on chart (page 345) at leverage factor of 33.7 per cent.

a net cost and discount of $152,000; and equity capital in the amount of $7,772,000, including stated value of common stock and surplus. The details of the rate-of-return calculation are shown in the table.

IT is pertinent to note that each successive change in capital structure, *i.e.*, progressive retirement of debt discount and expense, refunding of bonds, or changes in preferred stock status, and increase or decrease in surplus will modify the weighted average rate-of-return value. However, except for refunding operations, such changes do not modify materially the fair return value, except over a period of several years. Hence, rate-of-return values once established will hold substantially unchanged over a reasonable period into the future.

The foregoing discussion defines the general procedure followed in the development of what may be termed an "historical fair return" to be applied where the rate base value is established, in turn, on the basis of historical costs. There can be no reasonable argument as to the justification of considering the element of fair return on the same basis that is followed in reaching a determination of the related question of value. In this respect the necessity of consistency in dealing with economic factors cannot be overemphasized.

Faith in Representative Government Needed

"PROGRESS does not necessarily mean revolution in government unless men really want revolution. Therein lies the tragedy of the past decade. Many men, to gain personal power, sought to destroy local government. Others sought to nullify our system by setting up between the people and their elected officials boards, bureaus, and commissions exercising arbitrary power. Still others sought to break down the Federal structure itself by an unwarranted encroachment of the power of the national government upon state sovereignty.

"The greatest need in the world today is faith in the processes of representative government and a practical demonstration of its capacity to meet the needs of modern society."

—JOHN W. BRICKER,
Governor of Ohio.

The Human Side of a Utility Commissioner's Life

A former member of the Nebraska State Railway Commission recounts some of his personal experiences while acting as a public official and makes some suggestions.

By WILL M. MAUPIN

After six years' experience as a public utility commissioner, only to be retired by voters, intelligent or otherwise, an "ex"—especially an "ex" who is about to become an octogenarian — could have acquired some information on the human side of commission regulation which might be of interest to future candidates for such an office, and also to parties who may wish to appear or have to come before commissions for the settlement of their problems. That is my reason for writing about this aspect of commission experience.

I suppose there are always plenty of candidates for political offices everywhere. In my good state of Nebraska the office of state railway commissioner is greatly sought after. One reason is that aside from membership on the supreme court bench, it is the only 6-year term. Another is that a majority of those seeking it have not the slightest ideas of the duties and responsibilities of the office. It is, to them, just six years at a salary of $5,000 a year. The successful candidate is not long in ascertaining that the office is not all beer and skittles. Ere long he is between the Charybdis of those who damn him if he does and the Scylla of those who damn him if he does not. If he allows this situation to worry him he is apt to find a term of office full of shadows and with a few heartaches. If he takes it in his stride, confident that he is doing his duty as he sees it, he will find the job full of interest and pleasure. Having been a newspaperman for many years before I backslid so far as to become a mere officeholder, my hide was pretty well toughened; hence I paid little attention to criticisms of my official conduct. But the criticisms were many and the compliments few and far between. It is well-nigh impossible to decide a controversy in a manner that will please both sides. I was never foolish enough to try. The headaches

are many, the sole gratification being the knowledge that one has earnestly tried to do his duty as he sees it.

In my own case, and I believe it to be the same with others, my greatest headache as a commissioner was the failure of the electorate to realize the importance, to them, of the office. In the opinion of the public, apparently it is just a soft job at a good salary, with ample opportunities for pleasure jaunts at the expense of the taxpayers! Well, jaunts there were a plenty to hearings of various kinds in widely separated cities, but they lacked a lot of being pleasure jaunts, and the expense was never wholly borne by the taxpayers. I do not know how other utility commissioners came out, but I never attended a hearing and managed to make my expense account come anywhere near equaling the amount of money I paid out. One's fellow commissioners do not all chew gum.

Another headache of commissioners is the fact that too many of the public think it is the duty of the utility commission to put the kibosh on the public utilities, regardless of the facts, while too many others think it is the duty of the commission not to injure the utilities by undue regulation. Too few realize that it is the commission's duty to do exact justice, as nearly as possible, between the public and the utilities. Here, then, is where the "damned if you do, damned if you don't" comes in—a headache that no amount of aspirin can cure.

Here in Nebraska we have a situation which I hope does not exist in any other state. It is called "the integrated bar." It is not a legally enacted statute; merely a ukase from the supreme court. You may be the best lawyer in the state, but if you are not a member of the "integrated bar" association you are just out of luck, and out of court practice. However, if you are a member, no matter how little you know about regulatory laws, utility rates, etc., you can practice before any court, including the railway commission. You may be one of the nation's acknowledged rate experts, but if you are not a member of the "integrated bar" you are not permitted to question a witness in a rate hearing before the commission. The client must employ a lawyer with a paid-up card in the integrated bar association, although the lawyer may not know the difference between a rate rebate and an overcharge. So the rate expert sits beside the lawyer and whispers the questions to him, and the lawyer propounds the question to the witness. At the risk of being in contempt of court I make known my belief that it is a most unfair and ridiculous situation.

Aside from the legal representatives of the public utilities there are not a score of lawyers in Nebraska who know the first principles of utility regulatory laws, rate tariffs, or how rate schedules are prepared. The net result is confusion and injustice to the small litigant. The shrewd utility attorney has very little trouble in getting witnesses and opposing attorney tied in knots.

Often a commissioner is forced to take charge of the witness, and put questions in plain and understandable language. At a truck hearing in Sioux City an applicant for an interstate license was opposed by a railroad attorney. The applicant was a young

fellow, frightened at the array of lawyers and opposing witnesses, and the railroad attorney got him all fussed up with long and involved questions. As chairman of the hearing I finally lost patience. I asked the applicant a question that would make the matter plain to him. Instantly the attorney jumped to his feet and shouted:

"I object to the commissioner's question!"

Ordinarily I am mild of temper, but on this particular occasion I flew off the handle and exclaimed:

"I don't give a sour apple (or words to that effect) if you do. Objection overruled!"

So far as I know the record still stands. Later the attorney and I bent our elbows in unison and all was peaceful.

Because of the general ignorance of attorneys concerning regulation many ill-founded complaints are filed with the commission, resulting in cases illy prepared and witnesses not properly examined. In such cases commissioners are forced to protect the witnesses and endeavor to get at the real facts.

THE majority of patrons of the public utilities seem to believe that no matter what the rate may be it is too high. A demand is therefore made for a rate reduction. At the hearing the applicant and utility appear. Of course the utility comes prepared with all possible data, while the applicant has little or none, other than his claim that the rate is too high. He may be represented by an attorney who thinks that a depreciation reserve is cash in the bank, and "overhead" just the high salaries paid utility officials.

In such cases the very best the commission can do is to offer the applicant the records of the office. This is usually met with the charge that the records show only what the utility has submitted, and are therefore open to suspicion. But the fact is that the reports are made under oath, with a prison sentence imposed if they are false. To my knowledge it has never been shown that a report filed by a utility in Nebraska is false in any respect.

Often a witness is too eager and insists on airing his views instead of answering the questions put to him. When the commissioner presiding requires him to limit himself to answering the questions asked him, he leaves the stand firmly convinced that the commission is a tool of the corporations. Trying to evade a question is another source of cerebral agitation. There is never any trouble with the witnesses called by the utility. They know the answers right off the bat.

Perhaps the most annoying cases coming before the Nebraska commission are the applications of railroads for authority to abandon train service or substitute custodians for agent-op-

¶ "WISE *and unwise lawyers appear before the commission representing their various clients. The clients do not always appreciate the difference. Perhaps they are as lacking in wisdom as their lawyers. Some lawyers seem to be foolish enough to believe they can win their cases by insulting the commissioners.*"

erators at stations. If Spodunk on one side and Hickville on the other has an agent-operator, of course Shortgrass will oppose to the last ditch depriving itself of the same service. It will just ruin the business of Shortgrass to have to submit to custodial service. And the Order of Railroad Telegraphers will have a representative at the hearing to bolster up the protestants. If the application for custodial service is granted you have just one guess as to what the community calls the commission. You are correct.

I HAVE been asked whether pressure is ever brought to bear, from the outside, to influence the commission. Well, it never happened to me but once. I held a hearing on the application of a railroad to abandon one of two trains serving a branch line. Some twelve or fourteen communities interested sent large delegations to oppose the application, so many that the hall in which the hearing was held was crowded to suffocation. The applicant made its case, submitting records of receipts and expenditures, etc. Then the protestants had their inning. It was the usual story that limiting their service to one train each way a day would practically ruin the communities, deprive the farmers of shipping facilities, disrupt the mail service, and ruin things in general. I ordered a recess at noon and was the last one to leave the hall, having remained to get my papers in order. Just as I was preparing to leave for lunch five or six protestants came barging in and insisted on talking about the case off the record. I politely but firmly told them I would not discuss the matter with them, but would give them ample opportunity to present their case at the afternoon session, assuring them that the decision would be in accordance with the evidence and the known facts. Then one husky proceeded to tell me a few things. He said I probably would be a candidate for reëlection, and if the decision went against the protestants I might just as well not be a candidate, for they "would get me" at the polls.

Although normally a mild man as I have said, my reply on that occasion was too emphatic to be repeated here. In passing I might say that the application was granted in spite of the threat. While I was defeated for renomination, I nevertheless carried the county in which the hearing was held.

PROTESTANTS against utility rates and utilities are prone to act like trades unions seeking a new wage contract. They ask for a lot more than they hope to get. In the trades union case the union asks for a big increase and the employer asks for a better agreement than he hopes to get. Then the jockeying begins and continues until an accord is reached. In the rate case, however, the commission must be guided by facts. A commission case is not arbitration proceeding. The commission is legally bound to fix a rate that will make an adequate return on the capital actually invested in things used and useful in rendering the service. Its duty is to ascertain as nearly as possible what that investment is. It cannot demand unreasonable service and if it fixes an inadequate rate the supreme court steps in. The sooner the ratepayers realize this the better it will be for all parties concerned, especially for the commission.

If any commissioner longs for "fan

The Commissions Must Be Just

"... too many of the public think it is the duty of the utility commission to put the kibosh on the public utilities, regardless of the facts, while too many others think it is the duty of the commission not to injure the utilities by undue regulation. Too few realize that it is the commission's duty to do exact justice, as nearly as possible, between the public and the utilities."

mail" such as Hollywood stars and some others get, he is in for a big shock. The chances are he will never receive any for the very good reason, perhaps, that very few who appear before the commissions get all they ask for.

He must not be surprised, however, if he gets some of the other kind, the so-called brickbats. It happens now and then that a disappointed litigant will write in telling a commissioner frankly what he thinks of him. Such letters are not pleasant reading to anyone. They must be tough on a commissioner with a tender skin.

WISE and unwise lawyers appear before the commission representing their various clients. The clients do not always appreciate the difference. Perhaps they are as lacking in wisdom as their lawyers. Some lawyers seem to be foolish enough to believe they can win their cases by insulting the commissioners. An attorney once submitted a brief to our commission that was very abusive, saying that the commission was controlled by the corporations and ought to be abolished. Later he was employed by an association to secure commission authority to operate jitney service during a street car strike. The association got wind of the attorney's brief in the case referred to and promptly changed lawyers. A lawyer who thinks he can win by insulting and abusing the commissioners has two strikes against him every time he appears, notwithstanding the commission's decision must be based on the law and the facts.

Now and then the testimony of a witness borders on the ridiculous. At a hearing to determine a truck rate the commission's duty was to ascertain the cost of rendering the service and fix a rate that would return the operator a decent profit. One trucker testified that he operated a 5-ton truck at a total cost of 5 cents a mile. The assembled truck-

ers groaned in unison, but the witness insisted that he kept an accurate record of costs and he knew he was right. He said he would produce the record if ordered to do so. As chairman of the commission I told him to submit the record; then I leaned over to him and said: "Please take lunch with me. I wish you would show me how to operate my 8-cylinder, 4-door, for 5 cents a mile." He failed to meet me, and if he submitted his records, I never saw them.

I HAVE been asked how far is commission regulation in Nebraska affected by the government ownership policy of our state? The answer is: Very little, if any. The consumers and the taxpayers are the only ones affected. The Nebraska commission's authority over light and power utilities is practically nil. The publicly owned utilities fix their own rates, are exempt from taxation, and there is no limit to their issuance of securities. If a publicly owned electric utility wants to purchase a privately owned like utility, it need not worry about the purchase price. It just issues bonds. In the case of the private electric utility its rates are fixed by agreement with the municipal authorities, but its security issues must have the approval of the commission. About the only jurisdiction the commission has over the electric utilities is the authority to compel physical connection when in the public interest, and prevent discrimination in rates between parties using the same service. However, both must file application with the commission for authority to build, and must build according to the national safety code and the rules of the commission.

Not any of this is a commission headache, but it may be a headache to many ratepayers and taxpayers. Four years ago an attempt was made to amend the law governing public power districts which exempts them from taxation by putting them on an equal basis with privately owned electric utilities in matters of taxation. I have heard lobbying by privately owned public utilities damned from Dan to Beersheba, but for real lobbying commend me to the lobby maintained by the public power districts for tireless work and perhaps considerable expenditure of money—for entertainment, of course. The lobby managed to prevent amendment by agreeing to pay a certain sum of its own fixing "in lieu of taxes."

WHAT the Nebraska commission needs—and this may be true of some other commissions—is a better appreciation of its work by the public. In other words, better public relations brought about through a commission publicity department. The commissions might learn something in this line from some of the public utilities. I hope I may be pardoned for mentioning one Nebraska public utility that knows how to handle public relations. I refer to the Nebraska Power Company of Omaha. Its public relations are wellnigh ideal. The public relations departments of the Northwestern-Bell Telephone Company and the Union Pacific are worthy of commendation.

The public would of course be better served by the election of utility commissioners because of their qualifications and not because of their political affiliation or influence. But the last is seemingly hopeless. The last of the

three legislative sessions during my term of office was the only one in twenty years that did not see an attempt to abolish the commission. There was, however, the usual effort to prevent an adequate appropriation for that body. In every session there were members who sought to reduce the commission appropriation to the vanishing point. During the three sessions in question only one member of the legislature came to the commission seeking information as to its activities and responsibilities. He later became the most ardent advocate of an adequate appropriation.

During the argument over an amendment to the truck regulatory law one member, always a violent opponent of the commission, declared on the floor of the senate that "this infamous truck law has put 5,000 truckers out of business!" The fact that there never were that many trucks subject to regulation in all Nebraska did not matter. There were 3,200 truckers under regulation, and they were the ones who had demanded regulation. There are always one or more legislative windjammers in every session. When called down for his statement the legislator's reply was: "I don't give a damn; I am opposed to the commission and to truck regulation." Unfortunately there happens to be no law against ignorance and prejudice.

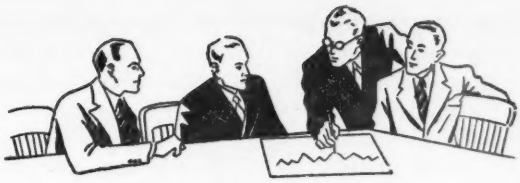
The ideal commissioner? The only one I ever knew, the author, was defeated in Nebraska on November 3, 1942!

A Post-war Challenge

"THE only way to service the vast debt we are now creating and to measure up to the possibilities of the post-war challenge is to produce wealth on a scale never before envisaged; to produce it at low costs, and to accomplish an abundance and a variety which will call out our total energies and our finest creative powers.

"In order to do this production must be profitable. The theory that you can generate wealth, peace, or prosperity by the lavish expenditure of money is utterly false. When production is genuinely profitable, there is something to save, and there is the stimulation of investment, which is one of the basic essentials in a dynamic society."

—HENRY J. KAISER,
West coast industrialist.



What Should Be Done with Excess Utility Earnings?

Should we tax them as excess profits, freeze them in reserves for postwar construction, or plow them into rate reductions? This author outlines the relative merits and demerits of these three solutions to the problem of extraordinary earnings in a period of extraordinary activity and extraordinary taxes.

By FRANK B. WARREN

SUBSTANTIAL progress has been made in recent years in simplifying the task of regulatory commissions in policing the activities of the regulated utilities. The functions and powers of these state and Federal agencies have become well established through a long series of commission and court decisions. The main objective of the regulatory commission has usually been the establishment and maintenance of a rate schedule which will produce a fair return, and no more, upon the fair value (or rate base) of the property used and useful in supplying service.

There are, of course, many collateral issues of great importance, such as adequacy of the service, unjust discrimination between the users or classes of users, reasonableness of operating expenses, division of joint costs, and others. The establishment of basic cost figures and the application of uniform accounting rules for many regulated utilities has resulted in making rate adjustments to reflect changing conditions a relatively simple matter in many instances. This is not to say that the thinning ranks of "reproduction cost" and "observed condition" advocates show any intention of giving up until the last man is down; nor is it intended to imply that "reproduction cost" and "observed condition" may not be useful elements in particular circumstances in testing the reasonableness of utility rates, existing or proposed. Nevertheless, substantial progress has been made in the direction of simplifying the major problem of determining the rate base and the revenue requirement.

Now comes this war-born conflict of what to do with excess utility earnings. Material and man-power shortages, together with greatly increased demands for service in many localities, have in-

troduced new elements into the rate-making problem. So has the heavy war tax program. To date there seem to be three schools of thought emerging in regulatory circles as to what should be done about rates which produce an over-all excessive return for a utility before payment of what will be called, for convenience, war taxes. These may be stated generally as follows:

1. Rates should be reduced when they produce excessive earnings which result in excess profits as defined in the tax laws.

2. Some, if not all, of the excess earnings in the war period should be applied to the creation of maintenance or other reserves.

3. The normal rate schedules should not be disturbed, and if excess earnings are produced they should be recaptured through excess profits taxes.

It is possible to state these three general philosophies rather precisely, but this does not mean that the adoption of one requires the rejection of the others in toto. They may overlap and merge one into the other, in a manner somewhat similar to the three pretzels in the Ballantine beer advertisements. Nor are those stated all the ideas involving emerging problems considered or expressed in regulatory circles. However, they have been more or less definitely outlined in formal or informal expressions of regulatory commissions or commissioners.[1]

[1] (1) Decision of Public Utilities Commission of the District of Columbia, in *Re* Washington Gas Light Co. Formal Case No. 316, decided October 13, 1942, 46 PUR(NS) 1.
(2) Decision of the Interstate Commerce Commission in Docket 28846, Texas Rates and Fares, decided December 18, 1942.
(3) "Dissenting and Concurring" Opinion of Board Member Warner, Civil Aeronautics Board, in Pennsylvania-Central Airlines Case, Docket 484, decided December 16, 1942.

The first school of thought referred to above evidently finds support in the belief that everything except the utility earnings is normal; that the sole function of the regulatory agency is to hold utility earnings down to a point where they do not produce excess profits under the tax laws. It has been stated that there is an element of unjust discrimination against users in utility rates which produce excess profits. It is contended that the user thus pays an unjust proportion of the war tax burden through the excess profits taxes of the utility in addition to his just share through his individual income tax.

There are several questions which might be raised. First, under the tax laws, what is called "excess profits" may not measure excess profits as they would be determined by a regulatory commission. The amount of excess profits under the tax law is largely contingent upon the capital structure of a particular utility. Certain last-minute changes in the tax law were designed to eliminate some of the more obvious inequities, but excess profits under the tax law still depend upon the capital structure. A corporation which has a substantial amount of its capital in either bonds or preferred stock and which also has a substantial investment subject to 5-year amortization under a war certificate may actually be in a better position with respect to Federal taxes under the 1942 law than under the 1941 law.

However, a corporation which has most of its capital structure represented by common stock and which does not or cannot avail itself of the 5-year amortization plan for capital investment associated with the war is

Rates and War Taxes

"MATERIAL *and man-power shortages, together with greatly increased demands for service in many localities, have introduced new elements into the rate-making problem. So has the heavy war tax program. To date there seem to be three schools of thought emerging in regulatory circles as to what should be done about rates which produce an over-all excessive return for a utility before payment of what will be called, for convenience, war taxes."*

in an extremely disadvantageous position. As a practical matter, there would seem to be no inducement to a utility to attempt to establish or to maintain rates which produce excess profits, since 90 cents out of every dollar of such excess profits will probably be recaptured by the government through war taxes. There is, however, an important consideration not specifically related to the revenue level. This involves the maintenance of a rate schedule designed to produce the required revenue on the basis of normal loads, both as among classes of customers and as an over-all matter. This has resulted in proposals for so-called refunds to customers at the end of selected accounting periods, rather than readjustment of the basic rate schedule itself. There are difficulties in accomplishing this result, since it requires extreme expedition to determine the appropriate amount of the reduction, and to reflect it so that it does not become taxable income, even though actually refunded to the customers.

THE second group lays stress upon the distortion in normal operating practices during the war emergency. It is assumed that a so-called stable rate structure, designed to produce adequate revenue, equitably distributed among various classes of users, and contemplating normal service, including normal expenditures for maintenance, should not be disturbed due to war conditions if the excess is largely attributable to a forced reduction in schedules, quality of service, or deferred expenses.

Under this theory the excess profits would be charged as expenses and segregated in a reserve to be used for a specific purpose. The Interstate Commerce Commission has specifically recognized this principle in providing for the creation of maintenance re-

serves. It is common knowledge that the railroads are unable to continue their usual standards of maintenance during the war due to excessive demands upon their facilities and lack of man power and materials. Likewise, many retirements, which would be made in normal times, are postponed. Also depreciation rates might be increased during war emergency, since the excess use of equipment certainly will affect the over-all life of the property and the rate, based upon a straight-line formula.

The difficulty encountered in this proposal is that of insuring that the extraordinary expenses thus allowed will be actually available for the benefit of future users in reducing costs in the future. There are court decisions which indicate that, in testing the validity of an order of a regulatory commission, the past is considered as dead and all calculations must contemplate expenses applicable to the future. Thus no advance provision in the past may be used to reduce costs otherwise reasonable in the future. There is also the possibility of an element of discrimination which might arise from giving consumers in the future the theoretical benefit of contributions by consumers in the past.

THE third school of thought is not necessarily a conflict with the second just discussed, since it is implied that proper reserves for maintenance and depreciation might well be considered as expense during the war emergency. The important point is that if a rate schedule, properly designed to produce adequate revenues under normal conditions, does produce excess profits due to the inability of the company to supply the quality and character of service which would be required in normal times, the excess is properly the subject of recapture through excess profits taxes.

The element of discrimination in these circumstances in the case of a general rate reduction is in favor of the average user of the service, who benefits from a reduced rate made possible solely by reason of the war emergency. In the absence of the war emergency this user would be paying a higher rate for a normal service. It is a little difficult to reconcile the concept of a degraded service with a normal rate and this is apparently not contemplated. It is probably contemplated that the average user will not have available as many schedules; and that the existing schedules will be utilized to a greater extent, but that he will essentially receive what he would have received in normal times. The average user thus is not considered as contributing an unjust proportion of the war cost, even though the utility pays excess profits taxes, since the excess profits are considered an accident due to the war, and the average user should not be unjustly enriched through a reduction in rate, reasonable for normal times.

TIME and space do not permit an attempt to reconcile these views which apparently conflict in certain respects. It is probable that no amount of discussion would serve to bring about an acceptance of any one or combination of more as sound for application in all circumstances. It would certainly aid such a reconciliation if the definition of excess profits under the tax laws were to be aligned with what is understood to be excess profits in regulatory parlance.

Wire and Wireless Communication

EUGENE L. Garey, New York attorney, recently selected as general counsel for the House committee investigating the Federal Communications Commission, was reported in Detroit last month conferring with Fred R. Walker, former assistant district attorney, who will join Garey in Washington as chief assistant in the investigation.

The House last January ordered an investigation of the FCC by a special committee headed by Representative E. E. Cox, Democrat of Georgia, after Cox had accused FCC Chairman James L. Fly of being "the worst bureaucrat."

"Of all of the bureaucrats that are in town who have sought to smear Congress, this man Fly is the worst," Cox said. Fly has feuded with Cox, largely over accusations that the Georgian improperly had represented an Albany, Georgia, radio station and had accepted a $2,500 fee.

Garey was expected in Washington early this month to set up an organization of twenty-five attorneys and attorney-investigators to cover activities of the FCC since its formation in 1934 and the stewardship of its members. Main target of the investigation is Chairman Fly, who as an all-out New Dealer is considered a leftist and, according to Garey, is supposed to have staffed his organization with some left wingers who are at least "touched with the Communist tinge." Garey stated:

> We are going to find out just what Fly and his men have been doing to socialize the radio broadcasting industry. We are going to investigate the personnel of the commission and its staff and the administration of the law to determine whether the commission has exceeded its authority. We are going to find out whether the commission has a policy of its own or whether it follows the policy in accordance with the law of Congress.
>
> It has been reported to us that Fly wants the government to take over all broadcasting stations—in other words, government ownership.

THE commission was saved from possible loss of its entire appropriation by the spectacular intervention of Speaker Sam Rayburn on the House floor last month. Striking out of the entire appropriation of $7,609,000 for the FCC was proposed by Representative Francis Case, Republican of South Dakota. Rayburn left the rostrum to make an "appeal to reason" and the FCC's appropriation was saved by a vote of 162 to 87.

Garey was chief counsel for Frank D. McKay, Republican national committeeman for Michigan, who was acquitted by a Federal jury on mail fraud charges last spring.

Walker was attorney for William H. McKeighan, former Flint mayor, and several other defendants in the same conspiracy trial with McKay. All of the defendants were acquitted.

Garey, a life-long Democrat, bolted to the Wendell L. Willkie camp in 1940. He later hired Franklin D. Roosevelt, Jr., in his Wall Street law firm.

Fly and the radio industry have been at loggerheads practically ever since he took over in 1939. He is a graduate of Annapolis and of Harvard. He served as assistant United States Attorney General and was counsel for the Tennessee Valley Authority.

Among charges to be investigated by the Cox committee is that the government has created monopolies, "frequently by granting licenses to favorites."

The attempt to eliminate all appropriations for the Federal Communications Commission until after the investigation of that agency was blocked in the House on February 17th. Speaker Rayburn, author of the bill which created the commission, demanded that FCC funds be included in the appropriations bill as essential to the prosecution of the war.

"I do not want to appeal to your prejudices or to your passions," he said, "but counsel with your reason. We are in a great war. The world is aflame. The air is filled with the propaganda from enemy powers."

Asserting the FCC was the only agency with control over the air lanes in this country, he pounded on the desk in front of the microphone in the well and cried out: "Do you by your vote at this time want to strike down that agency?"

It was the first time during this session of Congress that the speaker has taken the floor to discuss a bill, and he was greeted with applause from both Republicans and Democrats.

Representative Case argued that the investigation could develop just how much money it needed, and could study possible duplication of work which the Army and Navy are equipped to handle. "It doesn't mean," Case said, "that we want to abolish the commission."

* * * *

THE Federal Communications Commission on February 20th tentatively approved a merger of the Keystone Telephone system, the nation's last major competitive telephone group, into the Bell system. Keystone operates in Pennsylvania and New Jersey, and includes three companies with property valued at $15,717,053, the price to be paid by the Bell companies.

The merger was scheduled to come before the FCC for a final vote on March 11th unless objections were entered meanwhile. The commission said that "no serious objection is anticipated."

The New Jersey Bell Telephone Company will absorb the Keystone properties with 5,000 subscribers in New Jersey and the Bell Telephone Company of Pennsylvania will take over the properties with 13,800 subscribers in Pennsylvania. The commission said one factor in favor of the merger was conservation of critical war materials. Keystone employees will be absorbed by the consolidated companies and treated as if they had been employees of the Bell system during the period of their employment by Keystone.

First step in the merger will be the acquisition by the Bell companies of the capital stock of the Imperial Securities Company, which controls the three operating companies, the Keystone Telephone Company of Philadelphia, the Eastern Telephone & Telegraph Company, and the Camden & Atlantic Telephone Company.

* * * *

POSTAL Telegraph was born in 1886 out of a spectacular clash between two financial titans. On one side was Jay Gould, the railroad magnate who had but recently wrested the Western Union from William H. Vanderbilt. On the other was John William Mackay, a Dubliner, who had struck pay dirt in the Nevada gold fields. Their battle began when Mackay established the Commercial Cable Company and later Postal Telegraph to challenge the Gould-Western Union monopoly of oceanic cables and land lines. Out of the struggle America gained two telegraph systems linking all parts of the nation and extending out under the oceans to the rest of the world.

After the death of Gould and Mackay Western Union forged ahead until today it carries about 80 per cent of all wired messages, Postal the rest. In recent times Postal has been reported operating at a $400,000 a month deficit. To keep it and

its valuable network of wires alive, the Reconstruction Finance Corporation has lent it about $9,000,000. Frequently there has been talk of merging the once bitter rivals into one greater organization and with the coming of the war and the need for ever faster and more efficient telegraph service proposals have been pressed more insistently.

Last month the merger plan took a long step forward. Congress passed a law (and the President approved) permitting the union provided an agreement could be worked out between the two companies to which the Federal Communications Commission could agree. Some Senators raised the battle cry "monopoly," around which the original struggle between Gould and Mackay was waged, but more seemed to feel that the advantages of merging the equipment of the two companies were worth the risk in a day when such utilities are under strong government control.

SENATOR McFarland, Democrat of Arizona, asserted the merger would involve Western Union absorption of Postal, which has been suffering heavy operating losses.

Senator Langer, Republican of North Dakota, asserted approval of the merger would "place the public at the mercy of a monopoly."

Senator Aiken, Republican of Vermont, termed it "unsound, unwise, special privilege legislation," while Senator Hawkes, Republican of New Jersey, attacked conditions of the merger in a statement read in his absence by Senator Taft, Republican of Ohio.

The principal point of difference between the House and Senate versions involved job security. Under the compromise senior employees (those employed before March 1, 1941) may not be discharged, except for cause, for four years after the merger. Junior employees hired since March 1, 1941, may either be retained the same length of time after the merger as they had been employed before, or they may be dismissed with one month's severance pay for each year employed.

THE Western Union Telegraph Company and Postal Telegraph, Inc., were recently reported by the Federal Communications Commission to be seeking permission to reduce their leased-wire rates to the level established February 15th for similar services offered by companies in the American Telephone and Telegraph system.

At the same time, the FCC said, AT&T had completed negotiations with the Bell Telephone Company of Canada for reducing rates on overtime charges on long-distance calls between the United States and Canadian Bell systems. This reduction makes the overtime charge one-fourth of the basic charge for each minute in excess of the first three minutes, instead of one-third the basic charge.

* * * *

NET income of American Telephone and Telegraph system applicable to common stock of the parent company in 1942 was $160,170,093 after taxes and charges, equal to $8.57 a share. In 1941 the company reported net income of $191,770,694, equal to $10.26 a share. In 1941 there was no reservation of net income on account of the excess profits tax credit. Last year the net income before such reservation was equal to $8.79 a share.

The pamphlet report issued last month showed 1942 consolidated gross operating revenues of $1,469,263,216, against $1,298,688,896 in the preceding year. Federal income tax was $101,227,794, against $83,399,178, and Federal excess profits tax was $89,343,512 after a credit of $9,943,584, against excess profits tax of $22,869,350 in 1941.

Walter S. Gifford, president, said that total taxes of the Bell system companies, including Western Electric Company and Bell Telephone Laboratories, were $396,047,000 in 1942, against $288,493,000 in 1941, with Federal taxes alone up 65 per cent from the preceding year. Total taxes were equal to about $21 a share, or $6 a share more than in 1941, he added.

Debt obligations of the entire system increased $17,926,000 last year, the year-end total being $1,499,056,000, or 36.4

per cent of total capital obligations of $4,118,629,000, including surplus.

During the year the total number of telephone conversations handled surpassed any preceding year by 750,000,000, with the increase in long-distance calls particularly notable.

The net increase in system telephones in service last year was 1,171,800, bringing the total to 20,013,000. In the preceding year the increase was 1,357,000, last year's gain having been limited by Federal orders to restrict the use of materials in that direction.

The average number of telephone conversations daily went to a new high in 1942, about 87,000,000, an increase of 2,201,000 over 1941. Mr. Gifford said the increase in long-distance calls was "spectacular," noting that for the full year such calls numbered 114,364,000, against 85,465,000 in 1941 and 66,750,000 in 1940. He said that present long-distance business in some communities of normal 3,000 to 5,000 population is as great as in cities of 40,000.

EXPENDITURES for new construction last year were $345,000,000, against $420,000,000 in 1941, with toll and long-distance facilities accounting for 40 per cent of the 1942 total. Conservation of critical materials has been achieved to a marked degree, the report stated. December, 1942, figures against a year earlier show savings of 79 per cent in use of iron and steel; 80 per cent in nickel; 89 per cent in copper, zinc, lead, and antimony; 90 per cent in tin and crude rubber; and 96 per cent in aluminum.

Mr. Gifford stated that in spite of the addition of 2,500,000 miles of toll and long-distance circuits in 1942, of which 80 per cent was through use of carrier circuits, the facilities now are about 25 per cent under normal provision for present volume and in some cases the shortage exceeds 50 per cent.

In addition to Bell Laboratories research work, much of which is not revealable, the direct participation of telephone companies in the war effort is indicated in Western Electric Company total sales of $553,282,000, the highest in the history of the unit and 44 per cent above 1941. Of this total, $290,934,000, or 53 per cent, was in sales to the United States government.

* * * *

OPERATING taxes of the Pacific Telephone & Telegraph Company, zooming 41.9 per cent over 1941 to $34,410,946 in 1942, while the company was also under the heaviest physical strain in its history, exceeded by $14,723,446, or 74.8 per cent, the total dividends paid to the stockholders.

But President Powley was not "crying" about that part of it, nor about an increase of $11,357,077 in the system's payrolls compared with 1941. He appeared principally concerned that the public—sometimes impatient over service delays—should understand more of the company's situation under war-time controls and restrictions on service materials and supplies. Mr. Powley pointed out:

> The War Production Board, in its conservation of strategic materials (needed in the war), has restricted the construction of new telephone plant and has also restricted the amount and kind of local telephone service which may be supplied to the public.
>
> The Board of War Communications has been given power to control telephone service. Many other regulations also have been made effective under various acts of Congress and through executive agencies. Regulations issued, and as administered by the Office of Price Administration, have the practical effect of preventing our company from increasing its rates for any class of service even though the return from that class of service may be inadequate.

Further emphasizing the effect of the war and the compulsion of his company "to do more with less to do it with," as much-needed materials "went to war," Powley revealed that last year's volume reached an all-time high of more than 4,000,000,000 originating calls, an increase of more than 80,000,000 over the previous year.

Coincidentally, toll and long-distance calls soared, Powley said, to the unprecedented peak of more than 204,000,000, an increase of 20 per cent over the previous high of 1941.

Financial News and Comment

By OWEN ELY

Middle West Corporation

(First in a series of brief articles on holding companies.)

MIDDLE West is a $470,000,000 holding company reorganized in 1935 to take over the assets of the old Insull concern, Middle West Utilities Company, which had been in receivership since April, 1932. Holders of the notes and prefererd stock of the old company were given new common, while the old stockholders had to be content with a small amount of new purchase warrants which expired in 1938. Some of the Insull-controlled properties were lost to the system in the reorganization, including National Electric Company, National Public Service, and others. Commonwealth Light & Power and Inland Power & Light are still in reorganization.

The present make-up of the system may be summarized briefly as follows: Central & South West Utilities Company, a holding company system in itself, contributes nearly one-half of system revenues; it is controlled through ownership of about 76 per cent of the voting stock (about 47 per cent of the $7 prior lien preferred, all of the $6 prior lien, 57 per cent of the preferred, and 61 per cent of the common). Eventually when Central & South West Utilities and its subsidiary holding company, American Public Service Company, have been merged and reorganized, the interest in these companies will be distributed to stockholders of Middle West. However, this important distribution seems unlikely for some time.

It is also planned eventually to dissolve North West Utilities, which effectively controls Wisconsin Power & Light, Lake Superior District Power, and Northwestern Public Service. This group comprises about 23 per cent of the Middle West system. (Control of the largest operating company, Wisconsin Power & Light, is nominal since 55 per cent of the voting rights is now held by preferred stockholders.)

North West Utilities Company plans to distribute the stock holdings in these companies to its own stockholders, later this year if the SEC will approve, and dissolve; but since Middle West owns only 60 per cent of the prior preferred and only 35 per cent of the 7 per cent preferred (it owns all remaining stocks), there may be some question regarding the basis for distribution. Nothing has been earned for many years on the preferred and common shares on a parent company basis, but on a consolidated basis the preferred earned an average of about $4.50 during 1939-41. Some problem may arise as to the respective rights of the prior preferred and preferred stocks, both of which carry large dividend arrears.

With these distributions effected, Middle West would eventually be reduced in size about 60 per cent, and would then control only Central Illinois Public Service, Kentucky Utilities, and whatever portion of the stock of Public Service Company of Indiana is allotted to it.

MIDDLE West's sole capitalization is 3,307,302 shares of stock, currently selling around 6¾. Revenues, share earnings (consolidated and parent company), dividends, and price range have been as follows since organization of the new company:

Years	Rev. (Mill.)	Earned per Share Cons.	Parent	Dividends	Range
1942*	—	.96	.27	.35	4⅜–2¾
1941	74	1.13	.48	.40	6¼–3¼
1940	66	1.20	.53	.25	9⅝–5
1939	64	1.24	.43	—	10¼–5½
1938	61	.81	.40	—	8¼–4½
1937	60	.57	.23	—	15⅞–3⅜
1936	55	.49	.16	—	13¾–7

* Nine months ended September 30th.

Middle West's income account, showing the parent company's receipts and expenditures, was as follows in 1941:

Revenue:	
Subsidiaries—consolidated:	1941
Preferred dividends	$973,955
Common dividends	601,272
Interest on bonds	13,648
Dividends from other cos.	366,615
Interest in other cos. (10% to 50% of com. held)	22,400
Other income	293
Total Income	$1,978,182
General & admin. expenses	317,903
General taxes	18,288
Income taxes	56,742
Net Income	$1,585,250
Dividends	$1,317,228
Surplus for Year	$268,022

Subsidiaries from which the company received income of $100,000 or more in 1941 were the following:

Central & So. West. Util.	$453,528
Kentucky Utilities	318,655
Amer. Pub. Service	265,464
Central Ill. Pub. Service	227,887
Kansas Elec. Power	214,200
Okla. Power & Water	136,625
Southwest Lt. & Power	66,875

What About the New Taxes?

CALVIN Bullock's one hundredth issue of the bulletin, "Perspective," discusses the possible effects of increased tax rates on earnings. Taking a composite company which includes six of the leading concerns throughout the country, they have projected net income on the basis of three different rates for the combined normal and surtaxes, using a 90 per cent excess profits tax and allowing for post-war credits. With 1942 earnings of $1.80 and a continuation of the 40 per cent normal and surtax, 1943 earnings are estimated at $1.77. With a tax rate of 45 per cent, share earnings would be $1.59, a decrease of 12 per cent; and with a 50 per cent tax, earnings would drop to $1.44, a reduction of 20 per cent. The current composite price earnings ratio would be 12.5 using 1942 earnings, and respectively 12.7, 14.2, and 15.6 for the other three bases.

Taking 1939 as a "normal" prewar year, this composite stock in that year sold at 11.7 to 14.7 times earnings, or a mean of 13.1. The corresponding mean for the Dow-Jones industrial average was 15.6, and currently the Dow average is about 15 times estimated earnings. On this basis, Calvin Bullock thinks (if the price earnings ratios of the industrials can be taken as a criterion) that utilities are discounting an increase in the tax rate to 50 per cent.

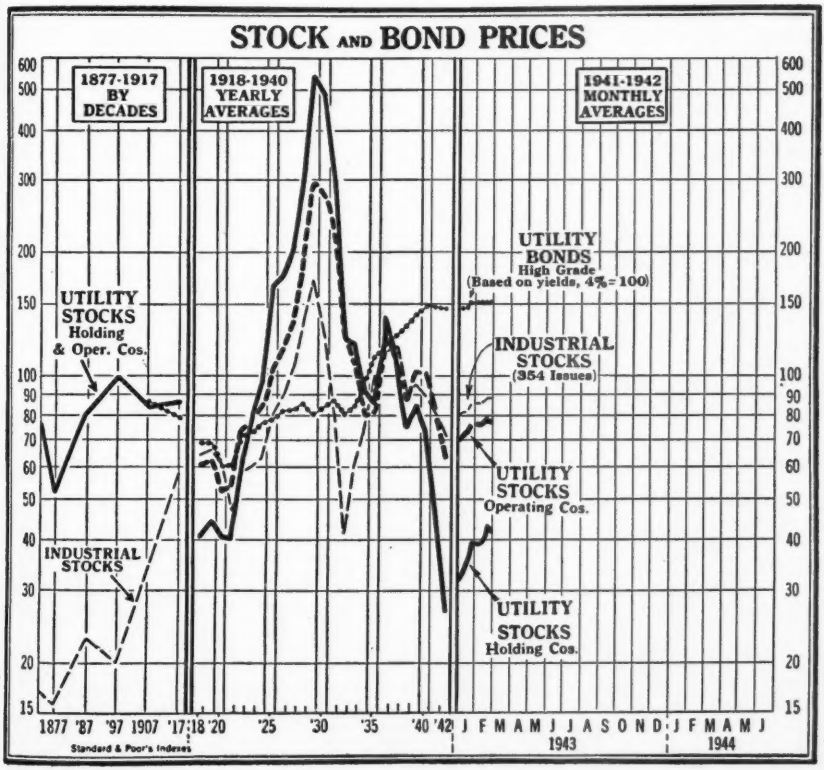
Due to the fact that comparatively little cash will be needed this year for building new facilities (owing to priorities) "Perspective" thinks that cash resources will remain high and that 80 per cent of earnings available for common stock may be devoted to dividends. On this basis, with the poorest estimate of earnings ($1.44 minus the postwar credit of 12 cents, or $1.32), 80 per cent of such net earnings paid in dividends would yield 4.7 per cent on the current price. With a 45 per cent tax rate, the yield would be 5.25 per cent.

LOOKING still further into the future and assuming that excess profits taxes will be eliminated, that the normal and surtax rate will be about double that of 1939, that gross revenues will be about 20 per cent above that year, and that operating costs will be somewhat higher, Calvin Bullock estimates that the composite company's share earnings might recover to around $2.25 per share or about the same as in 1939-40. On such a postwar earnings basis, utilities are currently selling at only about 10 times such earnings as compared with a general prewar average of about 13 or more. They do not feel that there will be unbridled inflation.

Associated Gas System Makes Big Tax Saving

LARGELY due to Federal tax savings resulting from provisions of the final 1942 tax bill, Associated Gas & Electric system (familiarly known as AGECO and AGECORP) was able to report a balance of consolidated income in 1942 of $8,660,673, an increase of 2.6 per cent over the previous year. Operating revenues gained 6.5 per cent and this gain was only partially absorbed by increases in expenses, maintenance, and depreciation. (Depreciation increased 8.9 per cent, but maintenance only 3.6 per cent, presumably due to priorities.) Federal and excess profits taxes increased 20.6 per cent. Gross income declined 1 per cent but due to reduced cost of funded debt charges, net income showed a gain of 2.6 per cent.

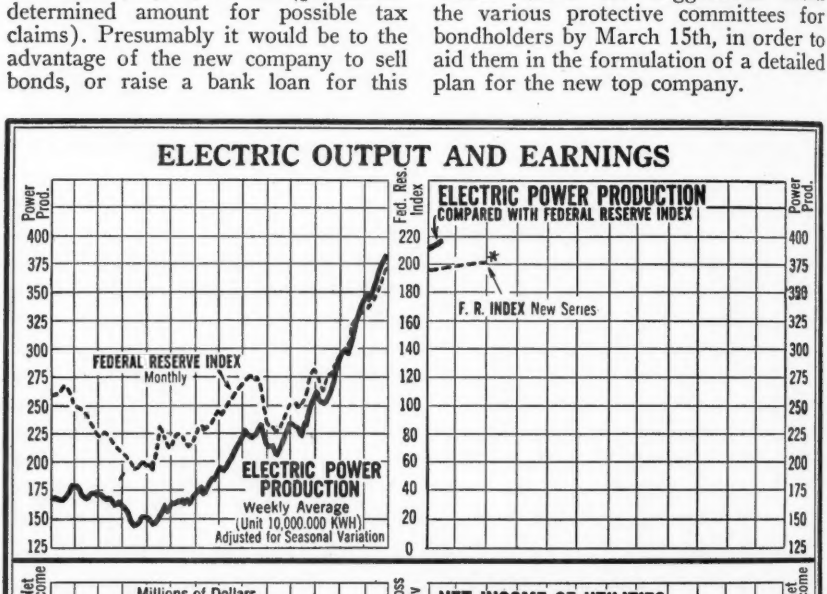
The Federal taxes computed on an annual corporate basis would have amounted to about $11,500,000 but after giving effect to the tax saving to be accomplished by filing a consolidated report, a saving of $3,400,000 was effected. Even with the large saving effected, Federal taxes showed a substantial gain. There is a possibility that a further tax saving of about $4,500,000 might be realized through deducting interest, etc., on AGECO and AGECORP debentures. It is understood, however, that the Treasury Department is opposed to the inclusion of interest accruals on this



huge amount of bonds issued by these top holding companies, which have been in receivership for the past three years, and on which no interest is being currently paid.

The trustees in their report of January 8th, under § 167 of the Bankruptcy Act, suggested the creation of a new top company to take over all assets and liabilities of AGECO and AGECORP. This company would presumably have to raise about $13,000,000 cash (plus an undetermined amount for possible tax claims). Presumably it would be to the advantage of the new company to sell bonds, or raise a bank loan for this amount, since this would reduce the system's tax liability. However, it remains questionable to what extent the SEC or the Federal court would permit the issuance of bonds by the new company; in any event, the aggregate amount of bonds which might be permitted would be far smaller than the present outstanding amount, on which the potential tax saving amounts to some $4,500,000.

The trustees of AGECO and AGECORP asked for suggestions from the various protective committees for bondholders by March 15th, in order to aid them in the formulation of a detailed plan for the new top company.



INTERIM EARNINGS REPORTS

	End of Periods	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Dec.	$2.21	$2.72	D19	$ .77	$ .58	33
Amer. Power & Lt. (pfd.) *Consol.*	Nov.	6.02	5.44	10	3.15	1.02	2.08
Parent Co.	June	2.98	4.72	D37	.43	1.23	D65
American Water Works *Consol.*	Sept.	.74	1.16	D36	..	..	..
Parent Co.	Sept.	.21	.49	D57	..	..	..
Cities Serv. P. & L. (pfd.) *Consol.*	Mar.(a)	4.40	5.76	D24	..	..	..
Parent Co.	Dec.	16.56	27.70	D40	..	..	..
Columbia G. & E. (1st pfd.) *Consol.*	Dec.	8.96	10.66	D16	3.77	2.55	48
Commonwealth Edison *Consol.*	Dec.	2.75	3.23	D15	..	..	..
Com. & Southern (pfd.) *Consol.*	Jan.	7.46	8.04	D7	3.09	2.49	24
Elec. Bond & Sh. (pfd.) *Parent Co.*	Sept.	4.52	7.47	D39	.99	1.47	D32
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Nov.	11.44	9.42	22	3.22	2.20	51
Parent Co.	Nov.	1.37	1.63	D16	..	..	..
Eng. Pub. Service *Consol.*	Dec.	9.79	11.23	D12	..	..	..
Parent Co.	Sept.	D.06	.64	..	..	..	..
Federal Lt. & Trac. *Consol.*	Sept.	1.23	1.66	D26	.27	.38	D29
L. I. Lighting (pfd.) *Consol.*	Dec.	3.54	3.10	14	..	..	..
Parent Co.	Dec.	5.14	3.92	32	..	..	..
Middle West Corp. *Consol.*	Sept.(b)	.96	.78	24	.41	.37	11
Parent Co.	Sept.(b)	.27	.36	D25	.07	.08	D13
Nat'l. Pr. & Light *Consol.*	Nov.	.69	1.06	D35	.20	.09	122
Parent Co.	Nov.	.11	.33	D67	..	..	..
Niagara Hudson Pr. Co. *Consol.*	Sept.	.46	.69	D33	D.02	.05	..
North Amer. Co. *Consol.*	Sept.	1.81	1.79	1	.40	.46	D13
Parent Co.	Sept.	1.48	1.58	D 6	..	..	..
Nor. States Pwr. (Del.) (cl. a) *Consol.*	Sept.	6.60	7.54	D13	D.03	1.43	..
Ogden Corp.	June(c)	.03	.02	..	..	..	..
Pub. Serv. Corp. of N. J. *Consol.*	Jan.	1.14	2.00	D43	.51	.85	D40
Std. Gas & Elec. (pr. pfd.) *Consol.*	Sept.	10.50	7.71	36	3.09	D.07	..
Parent Co.	Sept.	2.12	1.94	10	..	..	..
United Gas Improvement *Consol.*	Sept.	.60	.87	D31	.13	.15	D13
Parent Co.	Dec.	.48	.72	D33	..	..	..
United Lt. & Pr. (pfd.) *Consol.*	Dec.	6.89	8.78	D21	..	..	..
Parent Co.	Dec.	1.55	3.94	D61	..	..	..
Electric-gas Operating Companies							
Boston Edison	Dec.	4.35	4.36	..	..	..	..
Conn. Lt. & Power	Nov.	2.53	2.93	D14	..	..	..
Cons. Edison N. Y. *Consol.*	Dec.	1.79	2.00	D10	.75	.50	50
Parent Co.	Dec.	1.81	1.98	D9	.73	.37	198
Cons. Gas of Balto. *Consol.*	Dec.	4.20	4.64	D9	..	..	..
Detroit Edison *Consol.*	Dec.	1.23	1.96	D37	..	..	..
Hartford Elec. Lt. Co.	Dec .	2.47	2.95	D16	..	..	..
Indianapolis P. & L. *Consol.*	Dec.	1.99	2.47	D19	..	..	..
Pacific Gas & Elec. *Consol.*	Nov.	2.26	..	..	..	..	..
Public Service of Indiana	Nov.	1.76	2.17	D19	..	..	..
San Diego Gas & Elec.	Nov.	.94	1.20	D22	..	..	..
Southern California Edison	Dec.	1.59	2.42	D34	..	..	..
Gas Companies							
Amer. Lt. & Traction *Consol.*	Sept.	1.85	1.89	D2	..	..	..
Brooklyn Union Gas	Dec.	1.75	2.08	D16	..	..	..
El Paso Natural Gas *Consol.*	Nov.	3.58	3.33	7	..	..	..
Lone Star Gas *Consol.*	Dec.	.89	1.06	D16	..	..	..
Oklahoma Natural Gas	Jan.	3.34	3.79	D12	..	..	..
Pacific Lighting *Consol.*	Dec.	3.51	3.35	5	..	..	..
Peoples Gas Light & Coke *Consol.*	Dec.	6.10	6.53	D7	1.97	1.94	1
Southern Natural Gas *Consol.*	Dec.	1.68	2.34	D28	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Nov.	18.82	13.66	37	4.45	3.00	48
Parent Co.	Nov.	14.50	9.10	59	..	..	..
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	Dec.	8.57	10.26	D16	..	..	..
Parent Co.	Dec.	8.62	10.01	D14	1.98	2.31	D14
General Telephone *Consol.*	Sept.	2.64	2.74	D4	..	..	..

D—Deficit or decrease. (a) Three months (twelve months' statement not issued). (b) Nine months. (c) Six months.

What Others Think

Economics of War Power Supply

DURING the year 1942, the electrical energy produced by all agencies, both private and governmental, contributing to the public supply was 188,850,000,000 kilowatt hours. The combined demand on the facilities producing this energy during the highest hour of the year (there are 8,760 hours in a year) was 36,900,000 kilowatts. This demand was 10,000,000 less than the combined generating capacity, which means that the nation has a margin of excess capacity of about one million kilowatts more than it had a year ago.

These figures were recently announced from an authoritative quarter—none other than President C. W. Kellogg of the Edison Electric Institute, in an address before the Western Massachusetts Engineering Society, at Springfield, Massachusetts, on February 16th.

Contrasted with conditions surrounding many basic materials which have had to be rationed, Kellogg reaffirmed the assurance recently given by J. A. Krug, director of the Office of War Utilities, that there has been no shortage of electricity and is none today. Mr. Kellogg went on to discuss the economics of this situation.

FIRST, he pointed out that by the end of 1942 the electric utility business of the United States was serving over 32,250,000 customers. Oddly enough, the proportion of power consumed by industry was 2 per cent less in 1942 than in 1929. In 1942 industrial power comprised 56 per cent of the total energy sold. In 1926 and again in 1929, that ratio was 57.1 per cent. However, the net growth in installed electric generating capacity in 1942, amounting to 2,585,000 kilowatts, was the largest of any year but one, 1925, in the history of the industry. On a relative basis, however—that is, in terms of per cent increase over preëxisting capacity—the year 1942 was topped by every one of the eight years from 1923 to 1930, inclusive. Mr. Kellogg continued:

> There have been several approaches to the war power problem. Each has had what appeared at the time it was adopted a sound basis, but some failed to think the matter through to a conclusion; that is, they failed to take account of all contingencies.
>
> The first was to study the size and nature of the various items of war production required and then to apply to each the known amount of power required per unit of production. Such a computation led to really formidable totals. For a while the assumption was that these amounts of power had to be produced over and above existing requirements—that new generating capacity capable of producing them would have to be forthcoming.
>
> This line of reasoning overlooked the fact that the magnitude of industrial power requirements is necessarily incidental both to the amount of raw materials upon which it operates and to the man power required to do the work. Economic forces have always kept the supply of materials down to about the level of demand; there has on the whole never been percentage-wise much more of the raw materials of industry than was needed for current production. This followed inevitably from the fact that nothing is produced much beyond the point of filling orders for the material in question.
>
> Whatever the reason, however, it was very early in the war preparedness program that the demands of that program meant a direct competition, for a relatively limited supply of materials, between war preparedness and civilian activities. I recall personally, because I was part of the organization, that "priorities," as a subject for special treatment by the Defense Commission, came up first in the autumn of 1940, at a time when the monthly war expenditures of the government were one-twentieth their present current level. With the reorganization of the Defense Commission into OPM at New Year 1941, priorities had in the few months' interim become of such paramount importance that it was made one of the main divisions in the new organization. But even at that time,

preparedness expenses were only one-twelfth what they are running today.

In spite of this early emergence of the preparedness program, the natural momentum of the economic mechanism of a large country such as our own tended to make anticipated shrinkage in civilian economy lag. As a result, there was a certain amount of war load superimposed upon a substantial civilian load around the time of Pearl Harbor and shortly after, which led to the belief that war production would of itself require increases in power production facilities. Mr. Kellogg explained this:

> For example, it was one and a quarter years after the Defense Commission was set up that there occurred the greatest increase in industrial electric energy output over the corresponding month of the preceding year. In that month, September, 1941, industrial energy output was 1,656,000,000 kilowatt hours over 1940, which amounted to about 1.39 kilowatt hours for each dollar of increase in war preparedness expense. It was in that summer (July, 1941), and evidently based on the conditions I have mentioned, that the Federal Power Commission forecast power demands by the end of 1942 which were 6,673,000 kilowatts (or 20 per cent) greater than they later proved actually to have been when the record for 1942 was closed.

With the further progress of the war production program, however, it became clear that the "superposition" theory was not sound. Six months after Pearl Harbor the ratio of expenditures for power to total war expenditures had dropped to less than one-sixth of what it had been a year earlier. The speaker amplified this with statistical charts showing that as the war work grew in size and intensity, proportionate power capacity requirements decreased. Mr. Kellogg continued:

> The conclusion which the war experience through 1942 seems to demonstrate is that electric energy requirements really follow most closely the volume of industrial production. This ratio carries through in a unbroken chain for a continuous period of five years ending with 1942, a period covering the transition from peace to maximum war effort. Reflection will show why this is logical to expect. As was pointed out earlier, electric energy requirements for manufacturing are not a thing in themselves but are the resultant of industrial activity; and industrial activity in turn is rigidly limited by the materials upon which it can be applied. This limitation, being a physical one, is independent of peace or war—if war demands increase as they have done, they can be met only by a corresponding draft on civilian activities. Naturally the stimulus and pressure of war demands produce some greater output of the raw materials (as I plan to discuss later) but the total, war plus civilian, is limited in the manner I have stated.

Mr. Kellogg gave corresponding examples in the case of the displacement of man power, steel, coal, and munitions. He concluded:

> Even in a war effort as great as our own (and nothing of its magnitude has ever been made by any nation at any time) there comes a time when a peak is reached and the volume of expenditure begins to drop off. There are various reasons for this. One is that a substantial part of the expenditures to date has consisted in the construction and tooling of new plants for doing specific war work. These expenditures once made do not have to be repeated. Another reason is that great efforts had to be put forth initially to build up stocks of essential munitions. After this first accumulation was assured, the maintenance of it becomes a relatively smaller task. The turning point appeared in November, 1942, in which month, after a steady gain, averaging since the end of 1941 nearly $400,000,000 a month over the month immediately preceding, the war expenditures were less than November in both December and January.
>
> In 1942 electric energy output in kilowatt hours was 12.2 per cent greater than the previous year, while the maximum demand for power was but 5.1 per cent higher. The latter quantity is the one which measures the ability of the utility industry to carry the load. The difference between the two rates of growth is due to longer hours of operation, thus producing a higher load factor. The load factor of the nation in 1942 set an all-time high of 58.4 per cent, the highest previous figure having been 54.5 in both 1929 and 1941. This favorable result arose out of the greater use of the facilities by industry under the pressure of war. The result was, however, largely out of the hands of the utilities themselves, since they had to carry the load at all times but having no control over operations of individual plants.

After complimenting the steam railroads for their outstanding job in taking care of the carrier requirements of the war production program, Mr. Kellogg ventured some speculation as to the future:

What Others Think

Economics of War Power Supply

DURING the year 1942, the electrical energy produced by all agencies, both private and governmental, contributing to the public supply was 188,850,000,000 kilowatt hours. The combined demand on the facilities producing this energy during the highest hour of the year (there are 8,760 hours in a year) was 36,900,000 kilowatts. This demand was 10,000,000 less than the combined generating capacity, which means that the nation has a margin of excess capacity of about one million kilowatts more than it had a year ago.

These figures were recently announced from an authoritative quarter—none other than President C. W. Kellogg of the Edison Electric Institute, in an address before the Western Massachusetts Engineering Society, at Springfield, Massachusetts, on February 16th.

Contrasted with conditions surrounding many basic materials which have had to be rationed, Kellogg reaffirmed the assurance recently given by J. A. Krug, director of the Office of War Utilities, that there has been no shortage of electricity and is none today. Mr. Kellogg went on to discuss the economics of this situation.

FIRST, he pointed out that by the end of 1942 the electric utility business of the United States was serving over 32,250,000 customers. Oddly enough, the proportion of power consumed by industry was 2 per cent less in 1942 than in 1929. In 1942 industrial power comprised 56 per cent of the total energy sold. In 1926 and again in 1929, that ratio was 57.1 per cent. However, the net growth in installed electric generating capacity in 1942, amounting to 2,585,000 kilowatts, was the largest of any year but one, 1925, in the history of the industry. On a relative basis, however—that is, in terms of per cent increase over preëxisting capacity—the year 1942 was topped by every one of the eight years from 1923 to 1930, inclusive. Mr. Kellogg continued:

> There have been several approaches to the war power problem. Each has had what appeared at the time it was adopted a sound basis, but some failed to think the matter through to a conclusion; that is, they failed to take account of all contingencies.
>
> The first was to study the size and nature of the various items of war production required and then to apply to each the known amount of power required per unit of production. Such a computation led to really formidable totals. For a while the assumption was that these amounts of power had to be produced over and above existing requirements—that new generating capacity capable of producing them would have to be forthcoming.
>
> This line of reasoning overlooked the fact that the magnitude of industrial power requirements is necessarily incidental both to the amount of raw materials upon which it operates and to the man power required to do the work. Economic forces have always kept the supply of materials down to about the level of demand; there has on the whole never been percentage-wise much more of the raw materials of industry than was needed for current production. This followed inevitably from the fact that nothing is produced much beyond the point of filling orders for the material in question.
>
> Whatever the reason, however, it was very early in the war preparedness program that the demands of that program meant a direct competition, for a relatively limited supply of materials, between war preparedness and civilian activities. I recall personally, because I was part of the organization, that "priorities," as a subject for special treatment by the Defense Commission, came up first in the autumn of 1940, at a time when the monthly war expenditures of the government were one-twentieth their present current level. With the reorganization of the Defense Commission into OPM at New Year 1941, priorities had in the few months' interim become of such paramount importance that it was made one of the main divisions in the new organization. But even at that time,

preparedness expenses were only one-twelfth what they are running today.

In spite of this early emergence of the preparedness program, the natural momentum of the economic mechanism of a large country such as our own tended to make anticipated shrinkage in civilian economy lag. As a result, there was a certain amount of war load superimposed upon a substantial civilian load around the time of Pearl Harbor and shortly after, which led to the belief that war production would of itself require increases in power production facilities. Mr. Kellogg explained this:

> For example, it was one and a quarter years after the Defense Commission was set up that there occurred the greatest increase in industrial electric energy output over the corresponding month of the preceding year. In that month, September, 1941, industrial energy output was 1,656,000,000 kilowatt hours over 1940, which amounted to about 1.39 kilowatt hours for each dollar of increase in war preparedness expense. It was in that summer (July, 1941), and evidently based on the conditions I have mentioned, that the Federal Power Commission forecast power demands by the end of 1942 which were 6,673,000 kilowatts (or 20 per cent) greater than they later proved actually to have been when the record for 1942 was closed.

With the further progress of the war production program, however, it became clear that the "superposition" theory was not sound. Six months after Pearl Harbor the ratio of expenditures for power to total war expenditures had dropped to less than one-sixth of what it had been a year earlier. The speaker amplified this with statistical charts showing that as the war work grew in size and intensity, proportionate power capacity requirements decreased. Mr. Kellogg continued:

> The conclusion which the war experience through 1942 seems to demonstrate is that electric energy requirements really follow most closely the volume of industrial production. This ratio carries through in a unbroken chain for a continuous period of five years ending with 1942, a period covering the transition from peace to maximum war effort. Reflection will show why this is logical to expect. As was pointed out earlier, electric energy requirements for manufacturing are not a thing in themselves but are the resultant of industrial activity; and industrial activity in turn is rigidly limited by the materials upon which it can be applied. This limitation, being a physical one, is independent of peace or war—if war demands increase as they have done, they can be met only by a corresponding draft on civilian activities. Naturally the stimulus and pressure of war demands produce some greater output of the raw materials (as I plan to discuss later) but the total, war plus civilian, is limited in the manner I have stated.

Mr. Kellogg gave corresponding examples in the case of the displacement of man power, steel, coal, and munitions. He concluded:

> Even in a war effort as great as our own (and nothing of its magnitude has ever been made by any nation at any time) there comes a time when a peak is reached and the volume of expenditure begins to drop off. There are various reasons for this. One is that a substantial part of the expenditures to date has consisted in the construction and tooling of new plants for doing specific war work. These expenditures once made do not have to be repeated. Another reason is that great efforts had to be put forth initially to build up stocks of essential munitions. After this first accumulation was assured, the maintenance of it becomes a relatively smaller task. The turning point appeared in November, 1942, in which month, after a steady gain, averaging since the end of 1941 nearly $400,000,000 a month over the month immediately preceding, the war expenditures were less than November in both December and January.
>
> In 1942 electric energy output in kilowatt hours was 12.2 per cent greater than the previous year, while the maximum demand for power was but 5.1 per cent higher. The latter quantity is the one which measures the ability of the utility industry to carry the load. The difference between the two rates of growth is due to longer hours of operation, thus producing a higher load factor. The load factor of the nation in 1942 set an all-time high of 58.4 per cent, the highest previous figure having been 54.5 in both 1929 and 1941. This favorable result arose out of the greater use of the facilities by industry under the pressure of war. The result was, however, largely out of the hands of the utilities themselves, since they had to carry the load at all times but having no control over operations of individual plants.

After complimenting the steam railroads for their outstanding job in taking care of the carrier requirements of the war production program, Mr. Kellogg ventured some speculation as to the future:

We know that the rate of expansion of the expenditure for war is dropping—the monthly increase is about a quarter in the last two months what it was in the first ten months after Pearl Harbor. We know also that the displacement of civilian by war activity continues apace. It seems doubtful therefore that the growth in industrial activity in 1943 will be as great as it was in 1942. The general prevalence of this feeling is reflected in this year's construction budgets of industry, which show on the average one-half the size they did at the same time in 1942. It would be surprising, therefore (assuming the war continues through this year), if electric output or peak grew as much in 1943 as it did in 1942. Discontinuance of War Time and abandonment of the dimout, if generally adopted, could conceivably cause greater growth in peak load in 1943 than occurred in 1942; but on the other hand the new generating capacity scheduled for completion in 1943 is nearly twice as large as the growth in peak load recorded last year.

As to post-war conditions, I have no prophecy whatever to make as to how long the war will last, but we have some indications of the magnitude of the problems of readjustment after the war when we reflect that even now 17,500,000 persons are employed in war work and 7,000,000 are in the armed forces, and when we consider further that 65 per cent of the total national income is now being applied to war work. This rate of war expenditure took two years to build up; it will probably shrink more rapidly than it grew, even if, due to its size and world-wide scope, the dissolution of war activity should be a more gradual process after this war than it was after World War I. In any event, it will take a quick pick-up indeed in the resumption of civilian activity to prevent an initial slowdown in business activity resulting from discontinuance of war activity.

The initial severity of the post-war slack will be largely measured by the degree of dislocation of the war period. But the speaker ventured the hope that it would be a relatively short experience and that the huge mass of deferred demands built up during the war will hasten transition to a peace economy.

States' Rights in Utility Rate Making

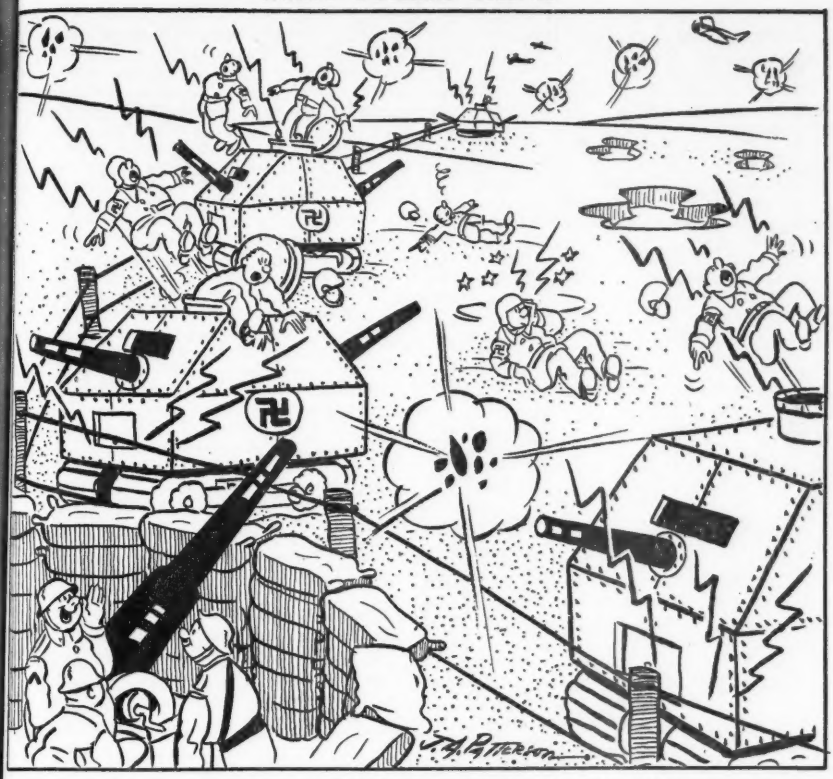
THE Arkansas Department of Public Utilities, in a very forthright manner, has apparently set off a giant firecracker in connection with the Federal Power Commission investigation of the prices charged by the Southwest power pool for electric supply to an aluminum plant at Lake Catherine, Arkansas. The FPC undertook this investigation under color of a presidential directive issued by the White House last September 22nd, which set the FPC up as an agency to investigate and determine the reasonableness of prices paid by war plants for their electrical energy—also the availability, if any, of alternate power supply at lower cost.

The Arkansas commission entered the case as an intervenor when it became apparent that the findings of the FPC might result in disturbing the general rate structure of the various private utilities which form the Southwest power pool, the principal unit of which is the Arkansas Power & Light Company.

On February 17th Wade L. Martin, chairman of the Louisiana Public Service Commission, in his capacity as the chairman of the executive committee of the National Association of Railroad and Utilities Commissioners, submitted to the other members of that committee a request from the Arkansas commission that the NARUC get into the fight, presumably on the side of the Arkansas commission.

The Arkansas commission's position was ably presented in a statement by Judge P. A. Lasley, its special counsel, in Federal Power Commission Docket IT-5802. It appears that all of the state commissions had been solicited by the Arkansas group in this matter and that three of them—Kansas, Missouri, and Oklahoma—had already actively joined the fray.

NET result was the action of the executive committee of the NARUC in agreeing to instruct its general solicitor to file a brief as *amicus curiae*. The association's legal officer was so instructed



"THE ENEMY CAN'T SEEM TO SOLVE CORPORAL IOWA BILL BROWN'S HOG FENCE DEFENSE"

in a telegram of February 20th, which stated:

> A majority of the members of the executive committee have voted to instruct you as general solicitor to intervene and file brief *amicus curiae* on behalf of the association in support of the position of the department of public utilities of Arkansas in Docket IT-5802 before the Federal Power Commission and you will please proceed accordingly. Also please arrange to make mention of this in one of your early bulletins in order that all parties concerned and member commissions might be informed.

And just what was there in the Southwest power pool investigation to stir up all this ruckus? Judge Lasley's statement of the Arkansas commission's position makes this perfectly clear. He said that the Arkansas board did not file its intervention in the interest of any of the utility companies. It was filed in the interest of the nation's war effort and to prevent an invasion of the Arkansas commission's exclusive jurisdiction. Judge Lasley stated on this point:

> The [Arkansas] department is further of the opinion that it is its duty to protest and oppose any attempt on the part of any agency, national or state, to force the utilities operating in Arkansas to serve civilian or war industries at rates too low to return to the company the cost of service, including operating expenses, depreciation, and return upon the facilities used in such service and to amortize any special emergency facilities constructed for service to either of the industries and which will not, after the emergency, be used and useful in the service.
>
> The department is not interested in the controversy between the public and private

power advocates. It does believe, however, and suggests that those advocates should take a vacation during the war and that neither should take advantage of the emergency to advance their respective theories.

Furthermore, the department believes that the question of public and private power should be determined by Congress and the various state legislatures and not by rate regulatory bodies, either state or national, and that the members of such bodies should refrain from specifically espousing either side of the question at any time and especially during the war.

The department knows it should not, and suggests that other regulatory bodies of the states and nation should not, under any pretext or guise whatever, attempt during the emergency to extend their powers beyond the well-defined statutory and constitutional limitations.

WITH respect to the jurisdictional issue, Judge Lasley pointed out that any attempt on the part of a Federal agency to exercise power over state matters not clearly provided by statutory and constitutional law must be actively resisted by the states. Otherwise, local jurisdiction would become impotent and Federal encroachment would become the "rule and not the exception." The Lasley statement continued:

> It was, at the time of the formation of the pool, and is now, the view of the department that both private and public power should work together, coöperate, and coördinate all public and private power-generating facilities and supply energy to all war industries at reasonable rates with the expenditure of a minimum of public funds, and the use of the least amount of critical material consistent with sound construction and operation.
>
> The order instituting this investigation, issued September 1, 1942, specifically limited the investigation to those matters within the jurisdiction of the Federal Power Commission. Since exclusive jurisdiction to regulate rates to Arkansas consumers, whether they be war plants or not, is vested in the Arkansas department and not in the Federal Power Commission, the department construed the order as applying only to the interstate transmission and sale of power to the Arkansas Power & Light Company by the other pool members and that there would be no attempt to inquire into the rate for the sale by the Arkansas Company to the aluminum plant.
>
> A copy of this order, together with a letter from the commission, was transmitted to the department. In the letter the commission asked, among other things, if the department was interested in a conference with respect to the matters involved in the order. Before the commission had made a field investigation of the matters involved or the cause was set for hearing, the department advised the commission that it was interested in the interstate rates involved in the Southwest power pool arrangement and their effect on the rates which the Arkansas Company might charge the aluminum plant. The department expressed a desire to sit in and be represented at any conferences with respect to these interstate rates.
>
> Notwithstanding this request, the Federal Power Commission undertook a field investigation of the matters involved and the department was not requested to furnish any information, attend any conference, nor otherwise consulted with respect to either the interstate rates or the rate to the aluminum plant.

Judge Lasley concedes that the FPC has exclusive jurisdiction over rates at which the pool members supply power in interstate commerce to the Arkansas Power & Light Company for sale by it to the aluminum plant. But he adds that the FPC has no jurisdiction whatever over the rate at which the latter company supplies power to the aluminum plant. Yet, the commission has obviously gone into such matters and the direction of its proceedings has indicated that the FPC counsel is out to reduce intrastate as well as interstate rates on power for the aluminum plant.

THE activity of the Arkansas Department of Public Utilities was further described by Judge Lasley:

> When the rate to the aluminum plant was filed with the department, it caused its engineering and accounting staffs to make an investigation as to the reasonableness of this rate. The staff was instructed to make a comparison of that rate with the rate of the Ark-La Coöperative for service to the aluminum plant. In directing that this comparison be made, the department was following the suggestion that the Honorable Leland Olds, chairman of the Federal Power Commission, made in a public address at Sante Fe, New Mexico, on September 8 or 9, 1941, to the effect that an efficient way of measuring the reasonableness of rates of private companies was a comparison of its rates with publicly owned or financed agencies. Such a comparison was made and an analysis of the cost of service by the Ark-La showed that the rate for its service was too low; and, for the Ark-La to recover its cost of energy

and all other operating costs and expenses, including reasonable annual depreciation and the interest on public funds borrowed, the rate of the Ark-La should have been substantially higher. Furthermore, it was the opinion of the department that the amount which the Arkansas Power & Light Company would be able to retain under the pool contract would not be sufficient to cover the cost of generating the energy which it would generate and furnish the aluminum plant and to amortize such of its investment in special facilities that would not be used and useful after the expiration of the contract. Notwithstanding this fact, the rate was permitted to become effective by operation of law, with the admonition to the Arkansas Company that any loss on account of this contract and service to the aluminum plant must be borne by the company, and not saddled upon its ratepayers.

Since this hearing, the department again has investigated the reasonableness of the rate to the aluminum plant and is now convinced that the Arkansas Power & Light Company actually will lose money on its contract with the Defense Plant Corporation, should it be required to amortize a substantial portion of its investment in special facilities out of the revenues received under the contract.

The Arkansas spokesman said that his department will insist that none of the companies under its jurisdiction—Arkansas Power & Light Company, Southwestern Gas & Electric Company, and Oklahoma Gas & Electric Company—should be required to serve any war industry at a rate "which merely covers the incremental cost of the service with nothing allowed for maintenance, depreciation, and return upon investment." To do so, in the opinion of the Arkansas department, would penalize Arkansas ratepayers who for years have paid for the carrying of facilities made use of during the emergency. The ratepayers, he said, are carrying their just portion of the war burden and should not have inflicted on them heavier responsibilities because of the war which are not borne by other citizens of the nation.

IN concluding his statement, Judge Lasley moved that all evidence, documentary and parol, bearing on the reasonableness of the aluminum plant rate, should be excluded and stricken from the FPC record, and that further evidence should be confined and limited to the reasonableness of the rates and matters over which the FPC has jurisdiction.

Whether the NARUC in its forthcoming brief as *amicus curiae* will take an equally strong position remains to be seen.

Democracy and the TVA

"THE TVA is playing a great part in the total mobilization of America which will help to win that war for the democratic principle," remarked Leland Olds, chairman of the Federal Power Commission at the Conference of TVA Distributors, at Chattanooga, Tennessee, on February 16, 1943. "But the relation of TVA to democracy, to the defense of democracy, to the building and preservation of a democratic civilization, is far more fundamental than that."

The speaker continued in part as follows:

> Economic democracy is as fundamental a part of the American tradition as political democracy. It has constituted the vitality of our heritage of freedom.
>
> It is in terms of this great American tradition that I want to talk about TVA and democracy, for I am convinced that in the TVA principle the country has found a way to build and preserve a glorious democratic civilization.
>
> And I am going to amplify the statement that the TVA principle offers a sure way to preserve our traditional democracy by asserting that it provides a means of reversing the powerful trend of the past generation toward centralized control of the country's economic life by an all-powerful corporate bureaucracy.

By planned regional abundance of low-cost electricity, each community and each group of communities, Mr. Olds felt, could encourage local production enterprises to employ their own people and to provide for their own needs. In this way the trend toward centralized control of the country's economic life by an "all-powerful corporate bureaucracy" would be eliminated.

ASSERTING that the TVA is essentially a *regional,* not a national, agency, Mr. Olds added that TVA management is located in and has identified itself with the region which it serves. It is vested with appropriate powers and the flexible corporate type of organization necessary to enable it to assist the people of the region in marshaling their resources.

Quoting the 1941 TVA report, he said:

> . . . . the authority is enabling the people to reclaim and revitalize many thousands of acres of their forest and agricultural lands. In the laboratory intensive research is uncovering new opportunities for taking advantage of native resources in the everyday business of earning a living. Working with the people and through their institutions, the TVA is perfecting new coöperative techniques for solving region-wide problems that overrun established political boundaries.

In other words, although the government provided the capital for starting the TVA, this enterprise belongs essentially to the people of the region which it serves. It is their agency. And it has been established for the coördinated planning of the use of their resources. It is enabling them to lift their economic life to new levels which will assure higher standards of living for farmers and wage earners as well as sustained prosperity for local business institutions.

OUTLINING in brief certain aspects of the TVA, Mr. Olds pointed out that the application of the TVA principle has unquestionably restored the distribution of electricity to "home-town control and management." This home-town control of the business of supplying electricity has done much to eliminate discrimination against small customers in charges for electricity. And the TVA principle is assuring the survival throughout the valley of the individual farm.

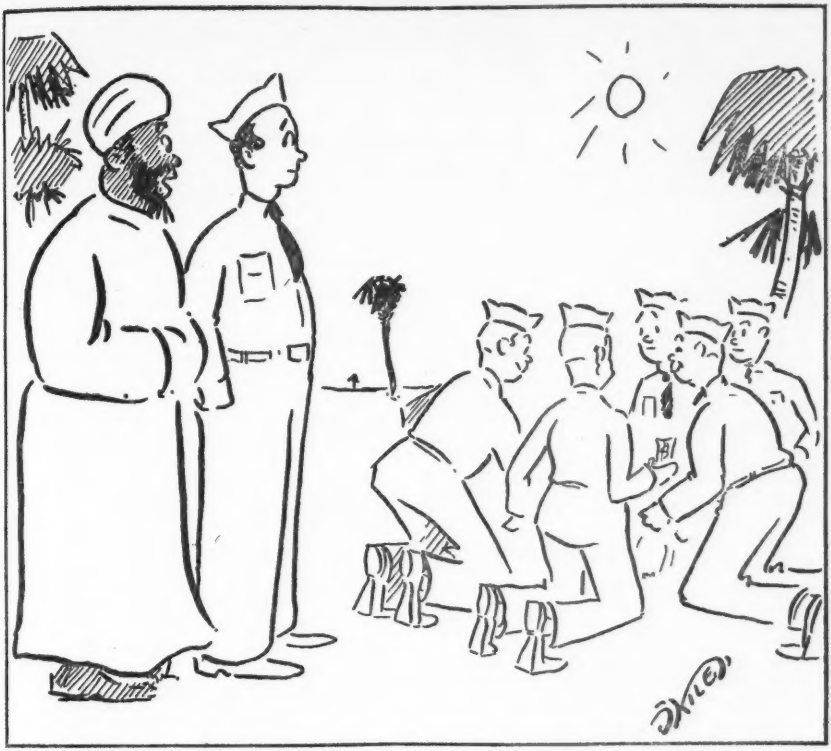
The essential principle of the TVA approach to sound regional economy includes, in Mr. Olds' opinion, the bringing back to the valley of the control of its own resources, as well as planned coöperation of all agencies, public and private, in the use of those resources for orderly economic and social development. In short, "it offers the people of a region a democratic procedure for promoting the 'general welfare.'"

Illustrating his remarks he continued:

> The results are most obvious in the field of electric power. The development of the region's power supply is no longer in the hands of men responsible to holding companies which were little more than departments of a centralized financial bureaucracy dominating the flow of capital into business enterprise throughout the country. Instead, the operation of the valley's power system is controlled locally, in terms of policies designed to serve the primary purpose of increasing the economic well-being of the people who live in it.
>
> Similarly, the region's supplies of fertilizer are no longer dominated by great chemical combines whose control could be traced back to the same financial center as that which dominated the region's power supply. Instead, there is experimentation with the use of the valley's own resources to restore its fertility. . . .
>
> So, also, the control of the agricultural life of the valley need no longer rest in the hands of great packing, milling, and grocery combines whose control of the national food markets once forced the individual farmers to crowd the soil for money crops without replenishing it. Under TVA leadership you have combined to redeem your way of life by balanced farming and local preserving and processing of its products.

ALTHOUGH all these things mark progress, Mr. Olds added that before a well-rounded, balanced regional economic life is created, one must go much further in the application of the TVA principle. Progress toward coöperation in each country, he felt, must proceed in accordance with its history and its tradition. In the American tradition of the independent farm and the small business, "before the days of the giant corporations ruled by financial bureaucracy," there existed a powerful community coöperative spirit. In this respect he said:

> . . . It is my conviction that this regional responsibility for the recreation of small business can be undertaken by a natural extension of the TVA principle into all phases of a region's life.
>
> In working out this extension of the TVA principle, each community, each group of communities forming a region, must assume conscious responsibility for its economic life, nurturing and supporting the institutions and agencies which serve it. There must be loyalty to the farmers producing the necessary



"DO ALL THE AMERICAN SIGNAL CORPS WARRIORS WORSHIP A PAIR OF LITTLE DOTTED IDOLS LIKE THAT, EFFENDI?"

agricultural products, loyalty to the small industries producing necessary manufactured products, loyalty which assures them a market in spite of the blandishments of national advertising by great corporations representing economic bureaucracy. In short, each community, each region, must constitute itself as an economic democracy, taking thought for providing its small business enterprises with the necessary market and the capital required to undertake and continue their particular line of service.

MR. Olds cited the Arizona Industrial Congress as an example of regional economic democracy. This Industrial Congress has helped all existing organizations to function most efficiently for their individual members. It has created markets nearest the point of origin for all products and retained all business possible in local or state channels. It has determined the amount of excess production over local needs and has distributed this excess. It has encouraged highest quality production and service. And it has crystallized public sentiment on constructive problems by the presentation of facts and the exchange of ideas between organizations.

Mr. Olds added:

> . . . I see such regional coöperation as the full flowering of the TVA principle. With purpose and drive behind it, I am convinced that this principle can reverse the trend toward centralized economic bureaucracy and thus preserve the traditional form of small enterprise, whether in agriculture, industry, or trade, which has been characteristic of American democracy.

Maintaining that the TVA principle

offers the way to restore service as the primary objective of business in a democracy, Mr. Olds concluded that the coöperative ideal in back of the TVA principle opens infinite vistas of democracy —a democracy in which the people control their economic life.

—E. M. P.

SEC Justifies Its Appropriation

ON January 12th, in hearings before the House Appropriations subcommittee, which have only recently been published, Chairman Ganson Purcell made some interesting comment on the work of the Securities and Exchange Commission dealing with the administration of the Holding Company Act. Mr. Purcell said the biggest job of the SEC right now is the administration of § 11. Summarizing this work of the commission as of that date, Mr. Purcell stated:

> You will note that there are now 48 such proceedings pending. These 48 proceedings involve practically all of the public utility holding company systems which are registered with us. More specifically, the aggregate assets of the companies involved in these proceedings are about $14,250,000,000 out of a total of $16,000,000,000 which represent the assets of all holding company systems that are registered with us.
>
> In 32 of these proceedings the commission has already entered orders prescribing action to be taken by the systems in order to comply with the law; and in other cases we are going ahead as rapidly as possible in the matter of issuing those orders, and we hope that they will all be issued in a very short time. In addition the commission has issued about 115 orders approving transactions for partial compliance with the integration and corporate simplification provisions of the act.
>
> As you will remember, in the statute, in § 11(c), it is provided that any holding company system or subsidiary subject to an order under § 11(b) (1) or 11(b) (2) has a year to comply with those orders, and on a showing of due diligence in endeavoring to carry out an order, the commission can grant an additional year if it seems necessary and proper. I may say that thus far we have granted seven applications for extension and have not turned down any for which application was made.
>
> We have reached a point in our § 11 work where some interpretations of the orders and findings of the commission have inevitably been sought in the courts. We have presently in the neighborhood of 25 cases in circuit courts of appeals, all of them involving very important issues, most of them involving orders either for integration under § 11(b) (1) or for corporate simplification and redistribution of voting power under § 11(b) (2).
>
> Five of the cases have already been argued and we may expect opinions in them from the circuit courts shortly; and it may well be that the Supreme Court itself will pass on some of these important points in the near future.

CHAIRMAN Purcell mentioned one particular development. It was a case on appeal from a § 11(b) (1) order taken before the third U. S. Circuit Court of Appeals by the United Gas Improvement Company. A few weeks after argument in the case, the company came in with a voluntary plan which, in the words of Chairman Purcell, "I think it safe to say, we feel has every chance of meeting the requirements of the act satisfactorily."

A few days after that Federal Water & Gas Corporation gave up legal proceedings and filed a plan for voluntary compliance. A day or so later Niagara Hudson voted to file a plan which has been worked up and discussed with the SEC Public Utilities Division. Chairman Purcell concluded:

> Perhaps it it wishful thinking on my part —but it is based on the type of report that has proven good in the cases I have mentioned—but it seems likely that there are several other of the major holding company systems that are presently working on plans and contemplate filing them in the near future.

The chairman went on to say that in the course of the past fifteen months or more there have been suggestions from various sources that the work under § 11 should be discontinued for the duration of the war. The chairman said on that point:

We are very ready to agree and always have been that § 11 proceedings should not be permitted to interfere with actual utility operations in the war effort, and we have taken steps to insure that there will be no such interference. We do not agree with the theory that these proceedings should be discontinued for the duration of the war. Our reason is that if the proceedings should be suspended, instead of obtaining constructive effects resulting in the conservation of values, the abatement of the proceedings will permit the continuance of unsound and uneconomic structures with their destructive effects on values to security holders.

So, I want to repeat that we are careful wherever we turn not to interfere in any way with the conduct of these war plants, and we are also equally conscious that we should drive forward in our work where it will not so interfere, and particularly where it will advance the war effort and the general public interest.

I have a rather good example of what I have in mind here. During September or October we issued orders under §§ 11(b)(2) and 11(b)(1) as to two separate holding company systems: One was the Community Power & Light system, and the other the United Light & Power system.

United owned a fairly sizable group of operating properties in the panhandle of Texas. Southwestern, a subsidiary of Community, owned adjacent property in Texas and New Mexico. We approved plans whereby Southwestern was to be recapitalized. Previously we had ordered United to give up control of its panhandle properties and in the case I am telling you about we permitted Southwestern to acquire these panhandle properties from United.

That resulted again, as far as the securities are concerned, in bonds of Southwestern, which had previously been selling at a discount in the market, being paid out in cash at their full face value.

Now on the practical operations side: This plan increased the ability of the combined panhandle and Southwestern systems to meet their respective power loads without the addition of any new generating facilities by permitting the more efficiem use of such facilities. The resulting interconnections and common ownership thereby deferred the necessity of their purchasing turbines, boilers, and generators for several years to come. That is a distinct advantage when you consider the shortage of critical materials and equipment of that character and the necessity of expanding power production to meet war loads.

CHAIRMAN Purcell told the subcommittee that he could not say definitely when the SEC would complete its work under § 11. "It is pretty difficult to say," he said, "although I think it can be said without any doubt that it will not be possible to complete it before the end of the fiscal year 1944 because of the time element inherent in § 11."

In response to a question by Representative Wigglesworth, Republican of Massachusetts, as to whether any simplification proceedings had been completed, Chairman Purcell mentioned several programs, including Southern Union Gas Company, Lone Star Gas Corporation, Empire Gas & Fuel Company, Public Service Company of Indiana, Community Power & Light Company, and Jacksonville Gas Company. In addition, the SEC has issued orders giving complete blue prints which certain major systems must take to comply with § 11. This was done in the case of United Light & Power, which has filed sixteen or seventeen applications for partial compliance therewith. All but one of these has been completed and the company was said to be ready to file additional applications as fast as the SEC can handle them. United Light & Power, therefore, is virtually complete.

Notes on Recent Publications

PARTICIPATION IN REORGANIZATION UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 OF PREFERRED STOCK PURCHASED BY CONTROLLING INTERESTS DURING REORGANIZATION PERIOD. 10 *George Washington Law Review,* 979, June, 1942.

PERFORMANCE OF THE AMERICAN RAILROADS. By Joseph B. Eastman, Director, Office of Defense Transportation. Address before annual meeting, Academy of Political Science, New York, N. Y. November 10, 1942.

PUBLIC UTILITIES COME THROUGH. By Ernest R. Abrams. *Financial World,* January 13, 1943.

WHY PUBLIC ORGANIZATION OF ELECTRIC POWER? By John Bauer. 30 *Georgetown Law Journal* 705, June, 1942.

The March of Events

Order Controls Materials Flow

THE Office of War Utilities, recently created within the War Production Board to administer war activities of electric, gas, water, steam, and communications utilities, issued its first basic order on February 24th governing the flow of materials into the entire utilities field with the exception of communications.

The order, U-1, replaces the former order P-46 and was the first industry order to be integrated with the new controlled materials plan.

An important group of provisions, designed to affect sharing of material and equipment in utility inventories, requires utilities to sell surplus stocks as a condition for continuing to receive priorities assistance. These provisions are linked with the creation of regional surplus stock offices, to be in operation throughout the United States this month, through which utilities will carry on the redistribution of their surplus materials and equipment.

The order also authorized the use of a higher rating, AA-1, and allotment symbol, to permit utilities to obtain materials for maintenance, repair, and minor construction. The order also, for the first time, brings under inventory regulation stocks of controlled material held by utilities for construction. Utilities are required to limit such holdings to their needs for sixty days.

The order sharply reduced the inventory which may be held for maintenance and repair after March 31st.

Although communications is part of the Office of War Utilities, the telephone and telegraph industries will continue to operate for the present under maintenance orders P-130 and P-132.

Krug Named Vice Chairman

CHAIRMAN Donald Nelson and WPB Executive Vice Chairman Charles E. Wilson recently announced appointment of J. A. Krug, director of the Office of War Utilities, to the position of vice chairman of WPB in charge of materials distribution. He also became chairman of the requirements committee and will continue to serve as War Utilities Director.

Coördinating Hauls

GREATER coördination of railroad and motor transport "cannot long be delayed," Joseph B. Eastman, Director of Defense Transportation, asserted recently. Mr. Eastman's statement was interpreted as formal notice to railroad and trucking interests that unless they reach an early agreement the ODT will issue a coördination plan of its own.

In the past several months, Mr. Eastman said, ODT has offered various proposals as "targets of discussion," and these have been under fire from all quarters.

Alabama

To Investigate Discounts

FORMAL orders of investigation into "gross bills" of electric and gas utilities, carrying also a study of existing rate structures with a view to possible simplification, were issued recently by the state public service commission.

The commission said three general types of hearings would be held beginning March 9th —one for electric utilities only, another for companies dealing only in gas, and a third specifically called for the Alabama Power Company, described as the only utility which distributes both gas and electricity.

Except for those differences, the commission said the orders were identical. It was explained that the March hearings would deal only with rates and "penalties" or "discounts," and would not include property values.

In its citation of the Alabama Power Company, on which a hearing was scheduled March 12th, the rate body ordered an investigation "into and concerning the fairness, reasonableness, and propriety of all differences in the amounts of bills required . . . be paid for services, or electricity or gas, which differences in amounts are based upon the time of payment of such bills by whatever name such differences may be designated, whether as penalties or discounts . . . with a view, if upon investigation the commission shall find any such differences to be unreasonable or unjustly discriminatory, to ordering the elimination thereof."

Arizona

Power Rates Slashed

AN annual reduction of $29,300 in the charges made by the Eloy Electric Power & Utility in Pinal county was announced last month by the Arizona Corporation Commission.

Chairman Amos A. Betts said the cut was mainly made possible through use of Parker dam power in the Eloy area for irrigation pumping purposes. That power is being obtained through the facilities of the Salt River Valley Water Users' Association.

The cut was based on 1942 usage, and was effective with March 1st billings, it was stated.

Under the new rate schedule, Betts said, $29,069 of the total reduction is in the irrigation pumping costs. The remainder of the savings is for domestic purposes, which comprise only a small part of the utility's business.

The reduction, resulting from Parker power, was $18,500. However, after conferences between the commission and the utility an additional cut of approximately $11,000 was passed on to the consumers. The domestic rate was reduced from $7 to $6.25 per 100 kilowatts, with the minimum usage cut from $4 to $2.

Arkansas

Public Power Bill Defeated

AN effort to permit cities to build or acquire municipally owned electric plants through passage of HB 334 put the Arkansas Power & Light Company under heavy fire in the state house last month but resulted in a 34-to-57 defeat of the measure.

A debate which lasted more than three hours brought to light many arguments for and against the controversial subject of public ownership of electric power. About twenty members took the floor during the discussion, which flared several times into heated verbal exchanges.

Introduced by Miss Alene Word of Mississippi county, one of the lower chamber's two women members and Osceola lawyer, the bill proposed to allow municipalities to issue revenue bonds for construction or purchase of electric power plants. Present laws require the organization of improvement districts for such acquisition.

Representative Toney of Jefferson, oldest house member in point of service, said the bill was "very dangerous" because of its socialistic tendencies and trend toward government ownership. He praised the power company for its work in building Arkansas, saying the state would not have obtained its many defense plants if it had not been for the company's power system.

Saying Osceola and other cities have benefited from ownership of electric plants, Miss Word declared the bill was not aimed at the AP&L but intended to give cities the right to acquire plants suitable to their people. No bonds could be issued until approved by the electors of any city, she said.

Representative Campbell of Garland criticized the issuance of revenue bonds as unsound business policy as they would be floated to obtain operating funds as well as for acquisition of a plant.

Schools would suffer if taxes paid them by the AP&L were wiped out, he added.

Colorado

Electric Coöperative Bill

ANY five individuals, or two or more coöperative associations, would be empowered to organize an electric coöperative corporation and engage in the electric utility business, under house bill No. 413, which was introduced last month in the lower house of the state legislature.

Sponsors of the bill were Representatives J. Fred Thomas of West Creek, William A. Carlson of Greeley, J. C. Kerr of Montrose, James S. Ogilvie of Kersey, O. B. Schooley of Brush, and N. J. Miller of Eaton, all Republicans, and Pat Magill, Jr., of Steamboat Springs, Democrat.

Broad powers would be granted these electric coöperatives. They would have power to "generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy to members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 per centum of the number of members. . . .

"Borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness, and to secure payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income. . . .

"Exercise the power of eminent domain in

the manner provided by the laws of this state for the exercise of such power by other corporations constructing or operating electric transmission and distribution lines or systems.

"Conduct its business and exercise its powers within or without this state."

Any corporation organized under the laws of Colorado and already engaged in supplying electric energy, or authorized to supply electric energy, could be converted into a coöperative by vote of not less than two-thirds of its capital stockholders.

Each electric coöperative would be required to pay an annual fee of $10 to the secretary of state.

The bill provides that each such coöperative "shall be exempt from all other excise and income taxes whatsoever, except coöperatives shall pay sales tax on their wholesale power bills but shall not collect sales tax from their members."

It was expected that the bill would be amended by the judiciary committee before it was ordered out.

Power Authority Bill

A RESOLUTION requesting the Federal Securities and Exchange Commission and the United States Bureau of Reclamation to appraise Colorado gas and electric properties which might be purchased under the Colorado power authority bill started controversy in the state general assembly recently before consideration of the bill itself was begun.

After a hot debate the resolution, introduced by Senators Curtis P. Ritchie of Pueblo and Wayne N. Aspinal of Palisade—both Democrats—but strongly supported by several Republicans, was referred to the state affairs committee of the senate.

Senator Arthur H. Laws, Republican of Denver, who is one of the sponsors of the power authority bill under which a 9-man board would be created to acquire, build, and operate gas and electric systems in Colorado, opposed the valuation resolution, arguing the people of Colorado are capable of taking care of their own affairs without Washington aid.

District of Columbia

Moves to Control Rates

WITH the threat of public ownership of the Potomac Electric Power Company unless demands for rate reductions were met, the Federal government recently was reported to have made plain its intention to regulate public utilities in the District of Columbia.

Such intention, implied throughout the months of struggle between the District of Columbia Public Utilities Commission and the Office of Price Administration over the pending gas rate case, was made unmistakable when the Treasury Department, filing for intervention in the electric rate hearings which began March 2nd, demanded abrogation of the sliding-scale, rate-finding agreement between the company and the commission.

In the hope of an immediate reduction in rates of PEPCO, the majority members of the District commission on March 2nd stood by their guns for limiting the present rate earnings to adjustments under the existing agreement, leaving to a subsequent investigation and hearing the question of abrogation or drastic revision of the plan.

The decision, by Chairman James H. Flanagan and Engineer Commissioner Charles W. Kutz, was made over objections of Gregory Hankin, commission minority member, and spokesmen for Federal agencies.

OPA's petition for intervention reached the District building a few hours after Secretary of Treasury Morgenthau had told his press conference that he would seek lower power rates, not only for the government, PEPCO's largest consumer, but for the entire consumer population of Washington.

Georgia

Bus Services Ready for Cut

THE Georgia Power Company is prepared to cut trackless trolley and bus service in Atlanta as much as 30 per cent, should an emergency arise.

It was reported last month that the company filed three separate sets of plans with the Office of Defense Transportation for such curtailment of transportation service in event of a critical gasoline or tire shortage. The plans call for 10 and 20 and 30 per cent reductions on mileage, respectively, for rubber-tired vehicles. They do not affect street cars.

The plans will be held in readiness for any crisis that might arise, ODT officials said. The curtailment would be temporary, and only for the duration of the fuel or tire shortage.

To save rubber and gasoline, the power company would eliminate special school bus service, turn back busses and trackless trolleys before reaching the end of the line, shorten downtown loops on some bus lines, and decrease the number of vehicles in operation.

Idaho

Injunction Sought

THE Securities and Exchange Commission last month asked the Federal District Court at Boise for an order to restrain the Idaho Power Company from making what it called contributions for political purposes.

A civil complaint filed by the SEC charged that the company is "making contributions through the Idaho State Chamber of Commerce and the Idaho Self Insurers Association and other agencies in connection with candidacies, nominations, and election and appointment of persons for and to offices of the state of Idaho and its political subdivisions." Such activity, the complaint said, violates provisions of the Public Utility Holding Company Act of 1935.

Illinois

ODT Approves River Taxis

ESTABLISHMENT of river taxi service on the Chicago river from Adams street to Michigan avenue as a supplement to Chicago's curtailed transit system has been approved by the Office of Defense Transportation, Alderman James R. Quinn, chairman of the city council's local transportation committee, disclosed recently. H. B. Potter, assistant director of the ODT's division of local transport, said the ODT had no objection to the plan as long as the "necessary authority is obtained from the proper regulatory bodies."

Alderman William T. Murphy, chairman of a special council subcommittee on river taxis, said Coast Guard authorities were studying their regulations affecting operation of the boats and would supply this information to Murphy.

Indiana

Bondholders Denied Damages

IN litigation growing out of the purchase of the old Indianapolis Gas Company property by the city of Indianapolis last year, which completed municipal ownership of the gas and coke utility, Federal Robert C. Baltzell, of Federal court, held last month that bondholders who refused to recognize the sale agreement are not entitled to recover interest or other damages.

Judge Baltzell pointed out that approximately 88 per cent of the bondholders had approved the agreement whereby the city bought the gas company property. He held that the sale agreement and the plan approved by a majority of the bondholders for retirement of the bonds was fair and equitable to all concerned and he overruled the contention of the minority group that they could not be bound by the agreement approved by a majority.

Under terms of the sale agreement, bonds of the Indianapolis Gas Company were to be retired at par value plus 2 per cent interest annually from the time payments were suspended pending litigation over acquisition of the property. Most of the bonds had been bought at a figure considerably under par value. The bonds run until 1952 and carry a 5 per cent interest rate.

Three suits were filed by bondholders in Federal court asking that the bonds be permitted to run until the 1952 retirement date and that the full 5 per cent interest rate be paid instead of the 2 per cent rate provided in the sale agreement with the city.

Judge Baltzell sustained the contention of the city that all bondholders should be bound by terms of the sale and the plan for liquidation of the Indianapolis Gas bonds which had been approved by a majority of the bondholders. Holding that the plaintiffs were not entitled to recover, he also ruled that any suit for such damages should have been brought by the Chase National Bank of New York, trustee for the bondholders.

Iowa

Fails to Reply

THE Des Moines city council last month decided to put off until next summer a decision whether the city should pay for a private appraisal of the gas and electric utility properties in that city as a basis for establishing rate charges.

Recently the council wrote the Federal Power Commission to ask about an FPC ap-

praisal, which it hoped would be free, but until late in February had received no reply.

The question of private appraisal was brought up by Burns & McDonnell, a firm of consulting engineers, it was said. The councilmen have met privately with a representative of that company. Mayor John MacVicar said that the representative simply gave a "sales talk" for the city's hiring the company to make an appraisal.

The question of appraisal arose in connection with possible city purchase of the utilities.

Kentucky

Appliances Farm Need

PHIL R. Holloway, superintendent of the Bluegrass Rural Electric Coöperative Association, told representatives at the annual meeting held in Nicholasville last month that one of its big problems was to find means of supplying electric appliances to farms along existing power lines.

"Electricity happens to be best fitted for processes that contribute to the supplies of milk, poultry, eggs, meat, and vegetables," Holloway said, "so the more appliances we can place in productive service . . . the more strength we'll give to our fighting men and our allies."

He said the coöperative office had plans for making some needed electric appliances at home with materials usually available on the farm.

Nebraska

Power Measure

THE Omaha power commission bill, LB 204, was reported out to general file by the legislative committee on public works last month with approval of five members, three not voting. The proposed measure, which attracted one of the largest crowds to attend a public hearing at this session of the legislature, would empower the city of Omaha to set up a people's power commission with authority to acquire existing privately owned utilities located within and without the city if contiguous in character and to operate the same for the benefit of the public.

The committee also sent to general file two other power bills, LB 71 and 72.

LB 71 by Garber provides that no public service company, whether publicly or privately owned, shall sell to any city or village of the second-class now operating its own electric light plant unless authorized by a vote of the people. LB 72, also by Garber, provides that no sale, lease, or transfer of any electric light or power plant, distribution system or transmission lines by any city, village, or public light and power district to any private person, firm, or corporation or to any governmental subdivision shall be valid unless authorized by a 60 per cent vote of the people.

Board Bill Altered

DISINCLINATION on the part of the state legislature to place too much power in a water conservation board or in the governor in connection with such board, was apparent recently when members started pruning LB 130 which came from the standing committee without amendment. Substantial alterations were made from the floor.

The bill, by Senators Neubauer of Harlan and Carmody of Hitchcock, undertakes to establish a state water conservation board of seven members, including the governor, state engineer, and director of conservation and survey, University of Nebraska, as *ex officio* members.

Four other members, one from each congressional district, would be appointed by the governor for staggering terms at the start and four years thereafter. At this point the bill ran into the amendatory string and was changed to provide that appointments shall be subject to legislative confirmation.

The bill provided that the board may engage a secretary and such other help as needed and fix salaries and wages. The four appointed members would receive $8 per day while actually engaged in the performance of duties as contemplated under the act.

New York

Power Plant Plan Shelved

MAYOR LaGuardia's proposal for New York city's purchase of the plant and equipment of the Staten Island Edison Corporation at a price not to exceed $16,500,000 was rejected last month at an executive session of the city council's finance committee. A motion

to file the proposal was carried by a vote of 5 to 1, with Mrs. Gertrude Weil Klein, American Labor party member from the Bronx, casting the only negative ballot.

The Democratic members of the finance committee, it was reported, based their unfavorable action largely on the fact that Willard F. Hine, consulting valuation engineer for the state public service commission, testified before the body on February 16th that the physical plant of the Staten Island Edison Company as of December 31, 1941, had a value of $7,183,416.

When asked for comment on the action of the city council in voting down his proposal to buy the property, Mayor LaGuardia prophesied that all the properties of the Consolidated Edison system would be owned and operated by the city "in the not far distant future."

The Staten Island Corporation is in no way affiliated with the Consolidated Edison system.

The mayor also predicted that the city council, before November, would support municipal ownership of public utilities. There will be an election of members of the council in November.

It was indicated that Mayor LaGuardia would renew his proposal after the state commission has completed its valuation of the Staten Island Edison Corporation, amending it to include a price ceiling substantially lower than the $14,500,000 suggested in the plan killed by the council last month.

Power Measure Passed

THE state assembly last month passed Governor Thomas E. Dewey's water power bill. It was signed March 4th.

The bill provides that the state's water power rights shall be vested in the people in perpetuity and specifically demands that private companies using such water shall pay the state for the full use of it. The latter provision is directed at the Niagara Falls Power Company which is entitled under a legislative grant to use 20,000 cubic feet of water a second, but pays for only 4,900 cubic feet. The measure, drawn at the instance of the governor, is designed to provoke a court ruling on the ability of the state to compel payment in full.

Finds Transit Set-up "Sad"

THE International Railway Company of Buffalo was directed by the state public service commission last month to make certain adjustments in its bookkeeping methods as a step toward improving its financial condition, which the commission found to be "sad."

The order followed commission approval of findings by Commissioner Maurice C. Burritt, who investigated the company's affairs. He said that the company failed to profit by the example of other transit companies which have rehabilitated themselves financially through reorganization. The commission, he said, lacked authority to compel complete reorganization, but added that such compulsion might be obtained by security holders in a court action.

Mr. Burritt's report constituted the second phase of the commission's investigation. The first part dealt with a contract between the railroad company and Mitten Management Corporation, which the commission disapproved in July, 1941. The disapproval was upheld in subsequent litigation.

Curb on Transit Fuel

CONDITIONS of war affecting availability, quality, and transportation of bituminous coal have caused the New York city board of transportation to relax the specifications on soft coal required for generation of electric power to operate the IRT and BMT divisions of the unified transit lines, it was disclosed recently.

The decision to let down the bars was made after the board had received only three bids on a proposal to supply the 1,250,000 tons of soft coal needed for the year beginning April 1st, and it was discovered that these bids covered only 330,000 tons, leaving a shortage of 920,000 tons. Thirty-five concerns had been invited to submit tenders.

Several of these, it was understood, informed the board of transportation that its specifications for bituminous coal were too strict, considering the shortage of man power at the mines and the uncertainty of transportation facilities. The companies indicated that they did not care to submit bids in view of the rigid terms and the proposed penalties for noncompliance.

Gas Consumers Warned

EIGHT thousand large users of gas, including bakeries, hotels, and industrial plants, were recently notified by the Consolidated Edison Company that they may have their gas shut off on twenty-four hours' notice if stocks of heavy fuel oil reach a low enough point.

North Carolina

Stockholders OK Change

CAROLINA Power & Light Company stockholders last month approved recommendations of the board of directors, accepting a Federal Power Commission order to reduce stated book values of its plant account by $18,648,438.

The order would be carried out by charging $5,005,338 to earned surplus and by charging $13,643,100 to capital surplus created through the surrender by National Power & Light Company of 1,442,609 shares of Carolina Power & Light's common stock. These bookkeeping changes will not affect the value of the company's property.

Following the favorable action by the stockholders on the FPC order, L. V. Sutton, president and general manager of the company, gave a brief report on the company's 1942 business.

Revenues, he said, were up 2 per cent over 1941; operating expenses were down 13 per cent, due largely to better operating conditions resulting from more favorable rainfall during the year; but taxes were up about 60 per cent, making the net income for the year 24 per cent less than the previous year.

Ohio

May Seek Rate Cut

PLANS to begin negotiations with the Columbus & Southern Ohio Electric Company to reduce the light rate, and a resolution ending possible litigation over the 1939 gas rate ordinance, held the attention of the Columbus city council recently.

Councilman Arvin J. Alexander, sponsor of the move to buy the rail-light company, suggested the conferences be held in the near future with utility executives to determine how much the electric rate can be reduced. The present 5-year ordinance with a top domestic rate of 4½ cents per kilowatt hour expires in November, 1944.

The proposal to begin negotiations at this early date on the 1944 light rate ordinance came on the heels of efforts to hire G. C. Myers, New York fiscal agent, to negotiate the sale of the $34,000,000 utility company to the city.

The Myers contract ordinance did not come up for a final vote.

A resolution to stop possible litigation over the 2-year 1939 gas rate ordinance, which carries a rate of 48 cents, was submitted to the council.

Under the legislation the city would agree to the subsequent rate of 56.22 cents per thousand cubic feet fixed by the state utilities commission in the 1934 rate case, and now in effect.

Expect Gas Rate Suit to End

CHAIRMAN George C. McConnaughey of the state public utilities commission informed counsel for the city of Cleveland and the East Ohio Gas Company recently that the commission would act promptly to end a long-standing controversy over three short-term Cleveland gas rate ordinances.

At the conclusion of a 2-day hearing, latest in a series dating from appeals filed by East Ohio in 1939, company attorneys moved that the commission permit valuations of East Ohio properties to be brought up to date in the case record.

Spencer W. Reeder, assistant Cleveland law director, objected to the motion on the ground that valuations as of June 30, 1939, the date of the original rate ordinance, alone were pertinent.

The commission set April 13th for the next —and possibly the final hearing.

Utility Rate Bill

A BILL to revise the system of fixing public utility rates was introduced in the state senate last month by Lawrence Kane, Republican of Cincinnati.

The bill would authorize the state public utilities commission to use the historical cost, or prudent investment, method of valuating public utilities for rate-making purposes, instead of computing the reproduction cost, less depreciation.

The bill was drafted by City Solicitor John R. Ellis of Cincinnati and was said to have the support of the municipal authorities of Cleveland, Columbus, Dayton, and Akron.

The house taxation committee recently reported out a bill to extend for two years the utility excise bill providing a .65 per cent tax on gross receipts, the money to be used for poor relief.

The present act expires April 30th.

Stay on War Time

MEMBERS of the Ohio Motor Bus Association, representing about 90 per cent of the state's bus concerns, agreed recently to continue operating on Eastern War Time after Ohio officially went back one hour to Eastern Standard Time February 21st.

"With railroads on fast time, we almost have to remain on Eastern War Time," said C. J. Randall, association secretary, reporting that bus operators attending a special meeting were in unanimous agreement.

"Many of our carrier members are interstate in their operations, so they must continue on war time of necessity. If any adjustments are necessary to meet local conditions, the individual operators will make them."

Randall said nearly 75 per cent of the bus lines operating wholly within Ohio must maintain connections with interstate lines and railroads.

Oregon

Utility Levy Supported

THE Lane county legislative delegation last month urged the house utilities committee to act favorably on a bill to tax municipally owned utilities, such as Eugene's electric plant, on the same basis as privately owned utilities, public utility districts, and rural electric cooperative associations.

Senator Angus Gibson, Junction City, said that "the cities which are fighting this bill favor only the taxes which the other fellow pays."

Representative John Snellstrom, Eugene, said the delegation was anticipating a time when there would be no private electric utilities to tax.

City Attorney W. M. Briggs of Ashland, which owns its own lighting plant, declared, however, that there is no profit in one branch of government taxing another.

Power Set-up Offered PUD

THE West Coast Power Company of Portland was granted permission by the Federal Power Commission to sell its electric facilities in Columbia and Clatsop counties to the Clatskanie People's Utility District for $150,000, it was recently reported.

The proposed sale, officers of the company said, is a result of the action of the people of Columbia and Clatsop counties in organizing the Clatskanie utility district, for which bonds were voted last spring.

Property to be sold consists of a local power distribution system, for which the West Coast Company has been buying current from the Westport Lumber Company. The power company's operations on the Oregon coast and in eastern Oregon and Idaho are not affected.

Bonneville Contract

DR. Paul J. Raver, Bonneville Power Administrator, recently refused to consider a contract offered by Portland General Electric Company officials for 50,000 kilowatts of firm power now being supplied PGE on a day-to-day basis by Bonneville. The proffered contract was for an indeterminate number of years, to be terminated when PGE properties were taken over at a "fair valuation" by some public agency.

A statement by ex-Governor Charles A. Sprague that when the matter of a proposed rate cut of $700,000 per year by PGE was "hot" just before Christmas, Raver had called Public Utilities Commissioner Ormond Bean in Salem and had "talked for thirty-five minutes with the commissioner, objecting to the proposed rate reduction, advising the commissioner he wanted the company earnings to remain at high levels and the money used to reduce its liabilities, so he (Raver) could buy the property at a lower figure," denied by Raver, was confirmed recently by Commissioner Bean, who was in Portland to attend SEC hearings.

In rejecting the offered PGE contract, Raver's letter accused PGE officials of demanding "as a matter of right that you be given an option to take over the entire firm power output of Bonneville dam, as required, over a period of twenty years, on your own terms, without appropriate protection of the public interest." Further in the letter of refusal Raver said he "must insist" on the terms of his previously offered contract (which demanded, as a condition for extending the PGE contract, that Bonneville be given an option on PGE Woodburn and Clark county, Washington, properties).

Pennsylvania

Faces Fight for Post

GOVERNOR Edward Martin's first appointment to the state public utility commission will have to run the gauntlet of Democratic opposition in the state senate, where confirmation can be blocked by solid opposition of the 18-member minority.

The appointee, named to succeed Public Utility Commissioner Richard J. Beamish, Democrat, whose term expires April 1st, is Dr. Frank Parker, University of Pennsylvania professor, described as a "financial counselor in public utility and railroad rate and valuation proceedings" for the past twenty-five years or more.

South Carolina

Set to Make Utility Bid

SOUTH Carolina's public service authority (Santee-Cooper) last month won the support of the Columbia city council for the proposed purchase of properties of the South Carolina Electric & Gas Company on the ground that the city would be given the right

to repurchase the local electric distribution and transportation systems.

Mayor Fred D. Marshall announced, following a conference with Santee-Cooper officials, that the city council had adopted the resolution supporting the proposed purchase. All members of the council attended the meeting.

The mayor said that the city was assured that the proposed bill providing for the purchase of the public utility properties in Columbia would include a measure giving municipalities the right to repurchase local distribution systems which are part of the system involved. (It was understood this bill would be introduced in the general assembly at an early date.)

The mayor explained that the city was assured it would be able to purchase the local system on the same basis as purchased by the authority. Asked how the city would finance the purchase of the distribution system, the mayor said that he anticipated entering a long-term agreement with the authority and would make annual payments to the authority instead of issuing revenue bonds to be used in the purchase. He explained that the city would take over the electric system at the city limits and would not extend this beyond the corporate limits but would continue to operate the gas system as at present unless the town of Eau Claire desired to buy that portion in that town. The bus system would be operated by the city.

Washington

Ordered to Carry Bonneville Power

IN its first action of the kind, the Federal Power Commission on February 18th ordered one utility to transmit another's electric power over its lines to give a war purpose user cheaper rates than the transmitting company offered.

The order directed the privately owned Washington Water Power Company to deliver power of the government-owned Bonneville Power Administration for use of Fort George Wright and an Army hospital at Spokane. Although the company offered to sell power to the fort and hospital, commission spokesmen said, Bonneville, which has lines connecting with the company's lines to the fort and hospital but none of its own to those points, submitted a "considerably lower" bid.

The order allows the company to make a reasonable charge for delivering Bonneville's power. If the two fail to agree on terms, however, the commission will determine them.

The company received twenty-one days to file a statement of the arrangements necessary to provide Bonneville with transmission and delivery service.

The commission spokesman said the company could supply the fort and hospital with power it produces and receive replenishing power from Bonneville.

The commission explained its action was taken under directions given it by President Roosevelt September 26th, to use its "emergency powers when necessary" to effectuate arrangements of the kind.

The company has since asked for an FPC hearing before enforcing the order. The utility company contends that greater benefits to the government would result if it were permitted to supply these war centers with its own power. Basis for the claim included the following factors which, the company stated, place the situation beyond the scope of the President's directive of last September 22nd setting up the FPC as an arbiter of war power supply costs: (1) The company buys only a small part of its supply from Bonneville; (2) by the company's use of a combination of pooled and "dump" power supply, the government would actually save money, especially considering taxes receivable; (3) again, by the company's use of such combination, additional "firm" power would be released in the Northwest area for war supply work requiring such power.

Public Utility Plan

STATEWIDE public ownership of the private electric properties in the state of Washington will not come overnight despite passage last month of legislation that practically dooms private utility operation within the state. Lieutenant Governor Victor A. Meyers on February 24th signed Initiative No. 12.

There were reported to be several obstacles which will block any early movement to bring under public control the $250,000,000 of private utilities operating in the state. These are owned principally by Puget Sound Power & Light Company, Washington Water Power Company, and Pacific Power & Light Company. The first is about to be divorced from Engineers Public Service while the latter two are subsidiaries of American Power & Light Company. The senate passed the initiative to hasten public ownership by a vote of 29 to 17 and the house by a vote of 62 to 37.

Under ordinary circumstances before such measures become law they must have the vote of the people. This obstacle was escaped by the inclusion in the measure recently passed of a special clause to the effect that an emergency situation existed.

Subsequently, an attempt by resolution to refer the bill to the voters at the next general election was first passed by the senate and then bottled up by parliamentary maneuver in the house.

The Latest Utility Rulings

Court Reaffirms Fair Value Theory in Overturning FPC Rate Decision

THE order of the Federal Power Commission in the Hope Natural Gas Company rate case, 44 PUR(NS) 1, has been set aside by the United States Circuit Court of Appeals for the Fourth Circuit. The commission had arrived at a rate base by taking the cost of the property as shown by the books of the company (corrected for bookkeeping errors but without allowance for price increases or consideration of capital items theretofore charged to expense) and deducting therefrom accrued depreciation based upon the estimated useful life of the property employed, without reference to evidence as to its present condition based upon tests and observations.

Circuit Judge Parker, after discussing various decisions on rate base determination, said:

> To sum up on this branch of the case: The Natural Gas Act makes no provision for a "fixed rate base" or the exclusive use of prudent investment in determining the base. Not to be confiscatory, rates must allow a fair return upon the present fair value of the property. To determine this fair return upon present fair value, the commission must find what the present fair value of the property is. The commission is not confined to any one formula or group of formulas in determining present fair value, but must determine it in the light of all the circumstances of the case. Prudent investment cost with proper allowance for depreciation may in some cases provide, without consideration of anything else, a proper measure of present fair value, but not where following investment there has been a decided change in price levels. Such a change in price levels is shown by the evidence in this case and besides is a matter of such general and common knowledge that the court must take judicial notice of it. The adoption by the commission of investment cost less depreciation as the rate base, therefore, is arbitrary and unreasonable, does not conform to statutory requirements, and is violative of the due process clause of the Fifth Amendment to the Constitution.

He did not interpret the Supreme Court decision in Federal Power Commission *v.* Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736, as rejecting the fair value rule. He said that the conception that not to be confiscatory rates must yield a fair return upon present fair value has long been well settled by Supreme Court decisions. He continued:

> Property has no value except present value. Past value exists only in memory or in history, future value only in estimate or expectation. It is the property presently existing which belongs to the utility and is used by the public. It is that property which is depreciated through use and which is gradually being sold through depreciation to the public. And it is the value of that property as used which must be considered in fixing rates that will reimburse the company for its partial sale through use and provide an adequate return upon investment. . . . It must not be forgotten that it is the property owned by the utility, and not the cash invested by stockholders in its stock, that is devoted to public use.

The court also held that whatever method of accounting had been followed in the past, the present fair value of gas wells and all elements entering into that value should have been given consideration. The commission had disallowed well-drilling costs because they had originally been charged on the books to expense.

Depreciation, the court held, should be based upon present fair value. Moreover, it is proper to include in depreciation the accrued portion of future abandonment cost properly computed.

The power of the commission to establish rates for a past period was denied.

The Natural Gas Act, it was said, showed clearly that it was the intention of Congress to give the commission quasi legislative power, that is, regulatory power as to future rates, but there is no indication of any intention to clothe it with judicial or quasi judicial powers with respect to past charges or practices. *Hope Natural Gas Co. v. Federal Power Commission et al. (Docket No. 4979).*

Ultimate Consumers to Benefit from Wholesale Rate Reduction

THE Federal Power Commission, in approving a reduction in rates of the Northern Natural Gas Company, owning and operating a pipe-line system extending 800 miles from the gas fields in southwestern Kansas and the Texas Panhandle for transmission of gas to distributing companies in Nebraska, Iowa, South Dakota, and Minnesota, observed that it was mindful of the fact that the ultimate purpose of its rate regulatory activities is the assurance of reasonable rates for ultimate consumers.

This purpose, said the commission, had been recognized by the courts in requiring that refunds of accumulated excess charges be distributed to ultimate consumers instead of the distributing company. In this case the wholesale company had recognized this relationship of wholesale to retail rates, and it was in a position to pass the reduction on in the case of sales to Peoples Natural Gas Company, which it controls through ownership of all voting stock. The commission had been advised by the city of Minneapolis, which has jurisdiction over local rates, that any reduction in the cost of gas to the Minneapolis Gas Light Company would be immediately reflected in rates charged to users of gas.

The largest single reduction to any distributor was to the Iowa-Nebraska Light & Power Company, which distributes gas to 35 communities in Nebraska. In order to carry out the purpose of benefiting ultimate consumers, the commission attached to its order a list of all distributors purchasing gas from the wholesale company. The commission said:

> A summary of the total amount of the reduction applicable to each distributor is shown on Sheet 1 of the exhibit. On the remaining sheets of the exhibit there is listed each community served by distributors and the amount of reduction applicable to each community. This information is attached to the order so that each distributor and each community may be advised of the estimated reduction applicable to it, thereby enabling prompt consideration of an appropriate reduction in the retail rates in each case.

The commission, in establishing the lower rates, followed the principles announced in recent proceedings which it said might be summarized as "a reasonable return upon the original cost of the property less the depreciation and depletion therein plus an allowance for working capital." A return of 6½ per cent on the rate base was allowed. *Re Northern Natural Gas Co. (Opinion No. 88).*

Accounting for Write-up of Plant before Acquisition by Affiliate

APPROVAL by the Pennsylvania commission of entries for reclassification of electric plant account brought forth vigorous dissents by Commissioners Buchanan and Beamish. The majority commissioners, without discussion, permitted a debit to Account 100.5, Electric Plant Acquisition Adjustments, in the amount of $70,780.75, representing a balance of plant increment resulting from recording of appraised values by Bradford Electric Light & Power Com-

pany before the acquisition of the property by Bradford Electric Company.

The dissenting commissioners believed that this so-called write-up should be classified in Account 107, Electric Plant Adjustments, because the selling company had been organized and was owned by the purchasing company. They criticized the view that inasmuch as a legally new corporation came into existence when Bradford Electric Company was created, the cost to it was different from the cost of the same assets to its affiliated predecessor, Bradford Electric Light & Power Company. Commissioner Buchanan, discussing the difference between these two accounts, said:

> Account 107 is a balance sheet account and was deliberately made so. Account 100.5 is not a balance sheet account, but the amounts therein are includable, hidden is a better word, in utility plant in the balance sheet. It is a generally accepted rule today among public accountants that inflationary items must be fully disclosed.

The majority had approved the disposition of the disputed item from Account 100.5 by requiring that the balance at January 1, 1937, of plant increment, less unidentified plant retirements, be charged to surplus, and that a balance remaining of excess of purchase price over original cost, together with war tax covering transfer of deed, be charged during 1942 to Account 505, Amortization of Electric Plant Acquisition Adjustments. Commissioner Buchanan, however, commenting on the underlying principle of these charges, said:

> There can be no doubt of the injustice made possible through classification of write-ups between affiliated interests under Account 100.5. The provisions of that account permit the depreciation or amortization of the items classified thereunder as the commission directs. Such provision would permit the amortization of such write-ups "above the line" or as an operating expense, *i.e.*, charge against the ratepayers, who would thus become innocent victims of the misconduct of the stockholders. Account 107, on the other hand, by the very nature of the items includable thereunder, requires disposal of the items "below the line" which is a charge against income and, therefore, a charge against the stockholder who perpetrated the original deceit. The majority ruling here would permit the perpetuation of the original fraud by a transfer of the amortization of the write-ups to the backs of the ratepayers through 100.5 in order to relieve the stockholding wrongdoer although this is only partly true in the instant action. The minority would place the burden where it rightfully belongs, on the owners who conceived the evil.

Commissioner Beamish, in his dissenting opinion, said that items classified in Account 107 are "by such classification plainly marked as suspect and as proper items for investigation and purging."

Commissioner Buchanan also objected to the war tax on the transfer of the properties imposed by the affixing of stamps on the deed. He said that for all practical purposes the same owner continued in possession. *Re Bradford Electric Co. (EOC No. 2).*

Uniform Power Factor Penalty Clause Ordered in Connecticut

THE Connecticut commission has ordered that each utility which sells reactive power or imposes a penalty for low power factor file a rate clause applicable to such sale which embodies the substance of a model clause approved by the commission. This clause reads as follows:

> When the highest kva of reactive demand, measured over the demand interval, exceeds 50 per cent of the kilowatt demand for the same month, an additional charge will be made in the amount of 25 cents per kva of such excess reactive demand.
>
> The ratio between active and reactive demands may be determined either by continuous measuring instruments or by periodic tests at reasonable intervals and if determined by test the resulting ratio will remain in effect until a new determination is made.

The symbol "KVA," the commission explained, means thousands of volt amperes consumed, hence, kilo-volt-amperes. KVA measures the composite

value of two components of electricity, active kva, or kilowatts, and reactive kva, or kilovars. KW, the symbol for kilowatts, which designates the rate of taking energy, or the working load, is synonymous with active KVA. Power factor may be expressed as the ratio of reactive power to active power.

Although not technically correct, said the commission, it is descriptive of the problem to state that an electric utility supplies two kinds of electricity: (1) the active kva, or kilowatts, which are measured by the kilowatt hour meter and charged to customers by the utility on its energy rate and which are used to do work such as turning the motor shaft; (2) the reactive kva, or kilovars, which supply magnetism to electromagnetic apparatus, such as magnetizing the poles of the motor in order that the active kva may do work. Reactive kva do not register on the kilowatt hour meter but the furnishing of them imposes additional costs upon the utility.

It was the purpose of the commission, through a uniform power factor penalty clause, to eliminate, so far as practicable, low power factor. A customer demanding service at low power factor should pay over and above the rate for light and power, sufficient to compensate for additional expenses incurred because of utilization at low power factor, provided that the additional charges are based on the cheapest method of eliminating the low power factor condition.

The cost of power factor correction, or the supplying of reactive kva, it appeared from the testimony, should be based upon the achievement of this function by static condensors, also called capacitors, since this is the most economical method.

It was assumed that the instrumentality for correcting low power factor would be the installation of static condensors or capacitors by the customer on his premises or by the utility on its distribution lines serving the customer. Continuing, the commission said in part as follows:

> Utility economics is based, however, on the assumption that what is sold is a service rather than a commodity. This service should be complete. Since most customers will always require some amount of reactive power and since such power can be supplied as economically by the utility as by the consumer, it appears to be equitable to grant the consumer the choice of whether he will supply his own reactive power or purchase it from the utility. This reactive power, which imposes measurable cost burdens on the utility, should not be supplied as a "free" service.

The commission believed that under any condition, but especially under war conditions, it is desirable to relieve the lines and equipment from the burden of reactive power. To accomplish that end the electric utility should install at its expense the apparatus for correcting the low power factor imposed on the line by the customer if the customer cannot be persuaded to supply his own corrective devices. *Re Uniform Power Factor Penalty Clause (Docket No. 7197).*

Commission Denial of Lower Rates to Crime Prevention Society Upheld

HOLDING that clear and specific findings of fact by the commission which were not assigned as error by an appellant cannot be challenged, the superior court of Pennsylvania upheld the decision of the commission, in 43 PUR(NS) 168, that the Crime Prevention Association of Philadelphia is not a "charitable institution" entitled to a discount on telephone rates.

This association, appealing from the commission order, is a nonprofit corporation entirely dependent upon voluntary contributions, but it does not come within the definition of a charitable institution because it is not engaged exclusively "in giving direct aid to the health and comfort of human beings by means of money, services, or physical objects." Specifically excluded from the definition

are corporations or associations whose principal work is the improvement of minds, the elevation of moral standards, the reformation of habits, the punishment of crimes or offenses, the enforcement of law, or the protection of rights.

The court pointed out that the question before the commission was whether the worthy work the appellant was doing brought it within the definition of charity as set forth in the company's tariffs. That was a factual issue. The court said in part:

> The appellant in its appeal petition averred that the commission erred in its conclusion that it is not a charitable institution within the meaning of the company's tariff and that the commission erred in the dismissal of the association's complaint. It is entirely silent as to any criticism respecting the commission's findings of fact. Even if assignments of error had been filed they would have been unavailing as the commission's findings, based upon substantial and competent evidence as in this record, are binding on this court.

Crime Prevention Asso. of Philadelphia v. Public Utility Commission.

Extra Charge for Additional Customers Approved

A MUNICIPALLY operated water utility was authorized by the Wisconsin commission to add to existing schedules a charge of 75 cents a quarter for each additional customer supplied through one service.

Notice of the proposed increase had been given to the Federal Price Administrator, but neither the administrator nor the Office of Price Administration had intervened or made any objection to the increase.

There existed in the municipality a large number of multiple dwelling units with several customers served through single connections. Others had no water in their apartments but had access to fixtures from which they carried water. This situation had arisen as a result of a recent influx of war industry workers. All customers were being supplied on an unmetered basis. The commission, in disposing of the application for this charge, said:

> No one has the right to the service of a water utility until he has made his contribution towards the cost of operating and maintaining a plant ready at all times to serve its customers. The customer who supplies his neighbor through his service connection deprives the utility of its right to collect the just share of the capacity and demand expenses from those who procure their water habitually from the service furnished to their neighbors. We have held in so many cases that a reasonable charge should be applied to those habitually resorting to the services of neighbors or to those takers considered as additional customers on a service line that it appears reasonable to approve the application in this case.

Re North Freedom (2-U-1872).

New Hampshire Policy against Continuous Agitation for Municipal Ownership

AN unfavorable vote on a proposal for the acquisition of electric facilities by a village district has the effect, under the New Hampshire statutes, of terminating pending proceedings for acquisition of the property for a period of two years. This ruling was made by the New Hampshire Supreme Court in holding that the commission should have dismissed a proceeding, brought five months after such an adverse vote, to determine questions arising out of a failure to ratify an agreement to purchase.

The voters, in July, 1940, had voted to establish a municipal plant. Local commissioners undertook to negotiate a purchase of property from the White Mountain Power Company. At a special mu-

nicipal meeting a motion to ratify an agreement for the purchase of the property was defeated. In March, 1941, it was voted to petition the commission for a determination of all questions. This vote, the court held, was unlawful and nugatory for the purpose of invoking the judgment of the commission.

It is provided by statute that if a vote on acquisition of property is unfavorable, no like vote shall be passed within two years thereafter (§ 4). Another statute (§ 8) permits a petition to the commission for a determination of pertinent questions and matters in dispute. The court said:

> Our decision has reference only to an unconditional rejection of a proposed contract by the precinct. If, in the present instance, the voters had been given a chance to vote upon alternative proposals, *i.e.*, to ratify the proposed contract or to petition the commission for a determination of the price to be paid, the statute would have been complied with and the petition might have been maintained if the second alternative had been adopted. The language of § 4, however, clearly indicates a policy that agitation for municipal ownership of lighting facilities shall not be continuous, but shall be terminated for two years by an unfavorable vote. We think it more important to vindicate this policy than to give the greatest possible extension to the authority of the commission in such cases.

White Mountain Power Co. v. Bartlett & North Conway Lighting Precinct, 29 A(2d) 468.

Refusal of Special Bus Service Not Discriminatory

An order of the Pennsylvania commission dismissing a complaint by the owner of a moving picture theatre in Conshokocken against the refusal of a bus company to sell combination round-trip bus and theater tickets to neighboring Norristown on seven days a week has been upheld by the Pennsylvania Superior Court. Such combination tickets six days a week have been sold for some years under an agreement with the owner of moving picture theatres in Norristown. Norristown in 1940 voted against Sunday theatres.

The complainant argued that since the bus company rendered this service to the theatre owner in Norristown during all the days its theatres were open, an offer to serve the complainant on less than all the days his theatre was open was an unreasonable discrimination. The truth of the matter was, said the court, that the complainant was interested in the service on Sunday only. He sought to capitalize on the closed houses in Norristown by siphoning off some of its movie business, and he thought the bus company should help him. The court said in part:

> The bus company refused to give the service principally on the ground that by doing so it would lose the good will of large groups who are opposed to Sunday movies on moral and religious grounds. And that it is the part of wisdom for public utilities to avoid involvement in the political controversies of their customers is too apparent to warrant discussion; it was underscored by the presence at the hearings of representatives of the Norristown Council of Churches and the Law and Order League who militantly opposed the granting of the service to appellant whereas appellant produced no supporting witnesses.

The court was not called upon to decide whether the bus company could have refused any combination service. It had offered exactly the same service, a combination week-day service, that it rendered to the other theatre owner. Commenting further on the question of discrimination, the court said:

> Public utilities are obliged to render service to the public without any unreasonable discrimination. But they are not bound to explore the business idiosyncrasies of each person who may be indirectly affected by the service and, upon finding certain inequalities, rearrange and reorganize the service so that A, B, and C all get the same *benefit* from it.

Fried v. Public Utility Commission.

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTED FROM

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 47 PUR(NS) NUMBER 1

Points of Special Interest

Titles and Index

TITLES

INDEX

PUBLIC UTILITIES REPORTS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

James F. Byrnes, Director of Economic Stabilization

v.

James H. Flanagan et al., Being the Public Utilities Commission of the District of Columbia

[No. 17805.]

Leon Henderson, Price Administrator

v.

Same

[No. 17806.]

(— F Supp —.)

Rates, § 44.1 — Powers of Commission — Federal intervention — Sliding-scale arrangement — Price Control Act.

1. A Commission cannot proceed in accordance with a sliding-scale arrangement alone to establish rates in the face of the congressional Act of October 2, 1942, amending the Emergency Price Control Act of 1942, to

require notice to the President or his representatives and consent to intervention in rate proceedings when a rate increase is proposed, p. 4.

Rates, § 44.1 — Federal Price Control Act — Intervention by President's representative — Sliding-scale arrangement — Inflationary effect.

2. The Act of October 2, 1942, amending the Emergency Price Control Act of 1942, requires that a Commission investigating proposals to increase rates under a sliding-scale arrangement give the President's representative a reasonable opportunity to present his case so that the Commission may determine whether the formula agreed upon in such arrangement is inflationary under present known conditions, p. 4.

Rates, § 44.1 — Price Control Act — Intervention by President's representative — Scope of proceeding.

3. The right conferred upon the President and his representatives by the Act of October 2, 1942, amending the Emergency Price Control Act of 1942 relating to notice of proposed rate increases, is not a mere formality, but the privilege of intervention contemplated by such act is one of substance and has direct relation to the avowed purpose of Congress to stabilize prices, wages, and profits, and the Commission is required to hear fully such evidence as the President's representatives may produce and otherwise make a searching investigation in the light of present economic and war conditions to determine whether the proposed increase in rates will be inflationary in character and so contrary to the declared policy of Congress, p. 4.

Rates, § 224 — Sliding-scale arrangement — Contractual effect — Public policy — Act of Congress.

4. A sliding-scale arrangement established by Commission order with the acquiescence of a regulated company is not a contract, certainly not one which binds the public, and it must give way to public policy and to congressional enactment which expresses that policy, p. 5.

Rates, § 44.1 Federal Price Control Act — Effect on rate arrangement.

5. Any arrangement governing rate making entered into before October 2, 1942, must give way to congressional edict by reason of the enactment of the Act of October 2, 1942, amending the Emergency Price Control Act of 1942, and the basic principles of the arrangement and other factors which inhere in the question of inflation and of fairness and justice are open for determination, p. 6.

[February 1, 1943.]

APPEALS *from orders of District of Columbia Public Utilities Commission authorizing higher gas rates under sliding-scale arrangement and limiting participation by Federal officers in rate proceedings; reversed and remanded with directions. For decision authorizing rate increase, see (1942) 46 PUR(NS) 1, and for subsequent proceeding based on Emergency Price Control Act of 1942, see (1942) 46 PUR(NS) 45, 50.*

APPEARANCES: Richmond B. Keech, Corporation Counsel, and Lloyd B. Harrison, Assistant Corporation Counsel, appearing for Public

Utilities Commissioners of the District of Columbia; E. Barrett Prettyman, Stoddard M. Stevens, C. Oscar Berry, and Renah F. Camalier, appearing for Washington Gas Light Company; David Ginsburg, General Counsel, Nathaniel Nathanson, Assistant General Counsel, Harry R. Booth, Utilities Counsel, Office of Price Administration, appearing for James F. Byrnes, Director of Economic Stabilization, and Leon Henderson, Price Administrator.

LETTS, J.: This proceeding arises out of the entry of an order by the District of Columbia Public Utilities Commission on October 13, 1942, 46 PUR(NS) 1, in which it granted the right of the Washington Gas Light Company, a public utility rendering gas service in the District of Columbia, to a rate increase applicable to the customers of that company.

An appeal is taken by the Office of Price Administration from that order and a like appeal is taken by the Director of Economic Stabilization from that order and a subsequent order entered on October 23, 1942, 46 PUR (NS) 45, 50, which denied the right of the Price Administrator on behalf of the Director of Economic Stabilization to intervene in that proceeding in accordance with the provisions of an act of Congress approved October 2, 1942.

On March 20, 1942, the Public Utilities Commission entered an order setting for hearing and investigation the rates of the Washington Gas Light Company. The order provided as follows: "That an engineering and accounting investigation be made relative to the rates, tolls, charges, tariffs, rules, regulation, and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding-scale arrangement."

The sliding-scale arrangement which was referred to by the Commission in its order of March 20, 1942, was entered into by the Commission on December 13, 1935. It appears that in 1935 the Commission was engaged in an investigation of the rates and valuation of the property of the Washington Gas Light Company. Following that investigation the Commission, after hearing, entered into what is known as the sliding-scale arrangement pursuant to the provisions of Par. 18 of the Public Utilities Act of the District of Columbia.*

That arrangement provided for a rate base of the property of the company; it provided for the determination of depreciation expense; it provided for a basic return of 6½ per cent; it provided for a certain formula and certain principles for the annual determination of rates following the entry of this sliding-scale arrangement. It provided also that if the net earnings of the company were to exceed 6½ per cent, then the excess earnings should be divided between the customers and the company in the form of a rate reduction. It provided also that if the earnings of the company were lower than 6½ per cent, under certain conditions there should be a rate increase to the company.

It was under the provisions of this sliding-scale arrangement which the Commission entered its order of March 20, 1942, providing for the

*11 PUR(NS) 469.

fixing of rates of the Washington Gas Light Company for the year beginning September 1, 1942. Following the issuance of this order of March 20th, certain investigations were made in accordance with the sliding-scale arrangement by the Commission's accountants and engineers. On August 14, 1942, a pre-hearing conference was held to which the utilities counsel for the Office of Price Administration was invited and appeared. Subsequently, the Commission went forward with the formal hearings on this matter, on August 18th, at which time a petition for intervention in that proceeding was filed by the Office of Price Administration and was granted.

That petition sets forth the very grave responsibilities of the Office of Price Administration in connection with the stabilization of prices and for the elimination of price increases under public law No. 421, which was the first emergency price control act of 1942; it pointed out that pursuant to the provisions of that statute, steps had been taken by the Office of Price Administration to stabilize nearly all commodity prices to the extent to which they were within the jurisdiction of the Office of Price Administration.

It also pointed out that payment for gas service constituted a regular item in the cost of living and that this was the first time since the nation had entered into the war and since we had been involved in this great emergency that the Commission was proceeding to fix rates pursuant to this formula which had been entered into in 1935 under economic conditions which were totally different from the conditions at the time the Commission began to consider the question as to what shall be the fair and reasonable rates of the company.

The Commission was requested to reconsider the basic principle of the sliding-scale arrangement in the light of the government's program to prevent increases in the cost of living and to stabilize prices.

[1–3] The Price Administrator claims that notwithstanding he was permitted to intervene the Commission nullified the permission by refusing to reconsider the basic principles of the sliding-scale arrangement in the light of the economic conditions and the government's program to prevent inflation. Appellants contend that by its rulings and pronouncements it limited its consideration to such data as would enable it to apply the formula of the sliding-scale arrangement in determining what rates were authorized by the sliding-scale arrangement.

Appellants complain that the Commission narrowly considered the matter of rates within the limits of the sliding-scale arrangement and refused to broaden the scope of its inquiry to determine whether the formula of the sliding scale could be properly applied in the light of known economic conditions and the government's program to prevent increases in the cost of living. It is said for the Commission that the order of March 20, 1942, provided only for the engineering and accounting investigation necessary to conform with the sliding-scale arrangement and that it was not required at the instance of appellants to broaden the scope of its inquiry beyond the purpose indicated in the order of March 20, 1942.

The amendment of October 2, 1942,

to the Emergency Price Control Act of 1942 provided in part "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase."

I think the Commission erred in its belief that it could proceed in accordance with the 1935 sliding-scale arrangement alone and in the face of the congressional Act of October 2, 1942.

The Act of October 2, 1942, required that the Commission give the President's representative a reasonable opportunity to present his case that the Commission might determine whether the formula agreed upon in the sliding-scale arrangement was inflationary, under present known conditions.

The record does not show that such opportunity was afforded; accordingly the case is returned to the Commission with direction that an inquiry be made to determine whether an application of the sliding formula is inflationary in view of the changed economic and war conditions.

True, some of the evidence offered by appellants to broaden the scope of inquiry was received. I think upon the record it is clear that the Commission regarded the inquiry within narrow limits and within the scope of the order of March 20th, as interpreted by the Commission and that the Commission closed its ears to the insistent demand of appellants to give consideration to the new factors required by the Act of October 2, 1942. In that respect I find that the action of the Commission was arbitrary and illegal. The right conferred upon the President and his representatives was not a mere formality. The privilege of intervention is one of substance and has direct relation to the avowed purpose of Congress to stabilize prices, wages and profits.

It is not so much a question as to whether the Commission should enlarge or broaden the scope of its hearing under the order of March 20th as what it should do to fix reasonable and just rates as required by the act of October 2, 1942, which seeks to prevent inflation. Such question may not be dismissed but must be met and the only way to meet it is to hear fully such evidence as the President's representatives may produce and otherwise make a searching investigation in the light of present economic and war conditions to determine whether the proposed increase in rates will be inflationary in character and so contrary to the declared policy of Congress.

[4] The sliding-scale arrangement is not a contract, certainly not one which binds the public.* It must give way to public policy and to congressional enactment which expresses that policy. The Commission in good faith has sought to fulfil its obligations under the sliding-scale arrangement but may have lost sight of the check upon it which has been voiced by Congress. I am not unmindful that the effort and the cost in bringing about the sliding-

* EDITOR'S NOTE.—For description of this arrangement see 11 PUR(NS) 469.

scale arrangement was very great. I think it was the result of fair and honest judgment and has been found to be a good, workable, and economical plan, but it must now be subjected to a test not previously required.

[5] In returning the case to the Commission it is with the direction that they afford the President's representatives the opportunity to fully test the inflationary trend, if any, which the proposed increase in rates may portend, and that the Commission coöperate therein. In so returning the case I indulge the hope that needless expense will be spared and that the question of the inflationary effect of the proposed increase will be fairly met. Any arrangement before October 2, 1942, lacks public approval and must give way to congressional edict. The basic principles of the arrangement and other factors which inhere in the question of inflation and of fairness and justice are open for determination.

The appeal is sustained and the Commission's order will be vacated. This memorandum may serve as a statement of my reasons for such action. If additional reasons are considered to be necessary they may be suggested. Let appellants present an appropriate form for final order.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

The North American Company

v.

Securities and Exchange Commission

[No. 105.]

(— F(2d) —.)

Intercorporate relations, § 19.4 — Simplification of holding company system — Necessity of general studies and recommendations.

1. Section 30 of the Holding Company Act, 15 USCA § 79z-4, directing the Commission to make studies and publish its recommendations, should be construed merely as an administrative direction to the Commission, not as a condition precedent to conducting a proceeding under § 11(b)(1) of the act, 15 USCA § 79k(b)(1), with respect to simplification of a holding company system, p. 9.

Intercorporate relations, § 19.8 — Integration of holding company system — Selection of principal system.

2. The selection of a principal system in integration proceedings under § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), must precede any final determination of what other businesses are reasonably incidental or economically necessary or appropriate to the operations of such principal system, as well as what additional integrated public utility systems the holding company is to be permitted to continue to control, p. 10.

Intercorporate relations, § 19.8 — Integration of holding company system — Selection of principal system — Deferment of selection.

3. Deferment of selection of the principal system to be retained in proceedings under § 11(b)(1) of the Holding Company Act, 15 USCA § 79k (b)(1), so as to permit a holding company to select its principal system at any time within the period allowed for compliance with a Commission order requiring integration, is not required by statute, nor is deferment necessary to adequate protection of the holding company against circumstances which may arise during the period allowed for compliance, p. 10.

Appeal and review, § 28.9 — Conclusiveness of findings — Holding company integration.

4. A court cannot review or reweigh the evidence before the Securities and Exchange Commission on the issue whether economy is achieved by centralized control, as a basis for a finding as to whether additional systems can be operated independently without the loss of substantial economies, since this is always a doubtful question and one peculiarly fitted for decision by an administrative agency staffed by experts, p. 11.

Intercorporate relations, § 19.5 — Integration of holding company system — Additional systems — Substantial economies.

5. The term "substantial economies" in § 11(b)(1)(A) of the Holding Company Act, 15 USCA § 79k(b)(1)(A), relating to retention of additional systems in order to avoid loss of substantial economies, means important economies and not merely something more than nominal, p. 11.

Intercorporate relations, § 19.5 — Integration of holding company system — Additional systems retainable.

6. Failure to satisfy the requirements of clause (A) of § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), (relating to substantial economies) precludes retention of additional systems regardless of the question whether the standard of clause (B) (relating to geographical limitations) or of the standard of (C) (relating to size), since all three clauses must be satisfied to secure the right to retain more than the primary system, p. 12.

Intercorporate relations, § 19.6 — Integration of holding company system — Other businesses retainable.

7. An "other business" is retainable in a holding company system under § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), only when it affirmatively appears that the public interest will be furthered by retention of a nonutility interest by reason of its relation to economy of management and operation of a public utility system or systems or the integration and coördination of related operating properties, consonant with the policy of the act expressed in § 1(b)(4), 15 USCA § 79a(b)(4), p. 12.

Intercorporate relations, § 6 — Regulation of holding company — Interstate question.

8. The necessity for a specific finding that a holding company is engaged in interstate commerce or that interstate commerce will be adversely affected by retention of the securities it owns, as a basis for an order of the Securities and Exchange Commission under § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), requiring divestment of interests, is eliminated by the statutory scheme; § 1 of the act, 15 USCA § 79a, expounds the policy underlying the necessity for control of holding com-

panies as defined in § 2(a)(7), 15 USCA § 79b(a)(7), and declares them to be affected with a national public interest, while § 3, 15 USCA § 79c, provides for exemption of subsidiaries predominantly intrastate in character, p. 12.

Interstate commerce, § 1 — Powers of Congress — Intrastate activities.

9. The power of Congress to regulate interstate commerce extends to regulation through legislative action of activities intrastate which have a substantial effect on the commerce, p. 12.

Interstate commerce, § 84 — Holding company regulation — Ownership of securities.

10. Congress did not exceed its power in regulating the ownership of securities by a holding company whose subsidiaries are engaged in interstate commerce by enacting § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), which requires a registered holding company to divest itself of all securities other than those related to a single integrated public utility system, although the ownership of securities does not of itself constitute engaging in interstate commerce and the ownership of property is characteristically an intrastate matter, p. 12.

Constitutional law, § 15 — Guaranty of due process.

11. The guaranty of due process under the Fifth Amendment of the Constitution demands only that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained, p. 14.

Intercorporate relations, § 5.1 — Holding company regulation — Constitutional requirements — Due process — Divestment of securities.

12. Section 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), does not violate the Fifth Amendment of the Constitution by requiring the divestment of securities of public utility subsidiaries held by a holding company, since this is a means clearly adapted to the congressional purpose of eliminating abuses in the public utility holding company field and the remedy selected by Congress is not so unreasonable, arbitrary, or capricious as to constitute taking property without due process, although this may be painful to common stockholders, p. 14.

[January 12, 1943.]

PETITION *to review orders of Securities and Exchange Commission in proceedings for simplification of holding company system under § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1); orders affirmed. For Commission decision, see 43 PUR(NS) 257.*

APPEARANCES: Sullivan & Cromwell, Attorneys, for petitioner, Charles E. Hughes, Jr., of counsel; John F. Davis, Solicitor, Roger S. Foster, Counsel, Public Utilities Division, David K. Kadane, Maurice C. Kaplan, and Jerome S. Katzin, Attorneys, for the respondent.

SWAN, C. J.: This case is before us on petitions of The North American Company, filed pursuant to § 24 (a) of the Public Utility Holding Company Act of 1935, 15 USCA § 79x (a), to review two orders made by the Securities and Exchange Commission in a proceeding initiated by it

under § 11 (b) (1) of the act, 15 USCA § 79k (b) (1). The orders were entered on April 14, 1942, 43 PUR(NS) 257, and June 25, 1942, respectively. The opinions of the Commission in support of them will be reported in The North American Company.[1]

The April order directed North American to divest itself of all its securities, with minor exceptions, other than those of Union Electric Company of Missouri and its subsidiaries (hereafter referred to as the St. Louis system). The June order denied North American's motion for leave to present further argument that the Commission lacks power to designate the particular system to be retained as its "single integrated public-utility system." North American's petitions to this court raise questions as to the construction and application of § 11 (b) (1) and challenge its constitutional validity.

The North American Company was organized in 1890 under the laws of New Jersey. Its principal office is in the city of New York, N. Y. Its business consists in acquiring and holding for investment stocks and other securities, principally in the electric utility field. It is the top holding company in a system containing 80 companies and operating in 17 states and the District of Columbia. At no time has it engaged in the business of managing the operations of its public utility operating subsidiaries, or selling them supplies, engineering services, or the like. It has, however, furnished financial advice and assistance and sponsored the interchange of operating information among the subsidiaries. On February 25, 1937, North American registered under the act[2] and thus became "a registered holding company" within the meaning of § 11 (b) (1). This section makes it the duty of the Commission, "as soon as practicable after January 1, 1938," to require each registered holding company to take such action as the Commission may find necessary to limit the operations of the holding company system to "a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations" thereof. A proviso permits a registered holding company "to continue to control one or more additional integrated public-utility systems" if they satisfy the requirements of clauses (A), (B), and (C) of the section. The orders complained of limit North American's operations to the St. Louis system. Such other facts as are required to be stated will appear in the course of our discussion.

[1] The first matter for consideration is the petitioner's contention that it was premature for the Commission to proceed with forced divestment under § 11 (b) (1) before it had made the studies and published its recommendations as required by § 30, 15 USCA § 79z–4. The issue was presented by a motion, denied by the Commission, to hold the proceeding in abeyance pending publication of such recommendation. It is argued that

[1] The opinions may be found in CCH Fed Securities Law Service, 1943, §§ 75,271, 75,297.

[2] Registration did not waive its right to future challenge of the validity of § 11. See Electric Bond & Share Co. v. Securities Exchange Commission (1938) 303 US 419, 435, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105.

Congress expected many holding companies, if given time and guidance, voluntarily to rearrange their affairs; the operation of § 11 (b) (1) was postponed to give the time, and the Commission was instructed to supply the guidance by making public its recommendations of administrative standards in respect to the matters referred to in § 30; hence, the order of April, 1942, *supra,* was premature as no such guidance had been supplied. Whatever may have been the expectation of Congress as to voluntary readjustments, we can find nothing in the statutory language justifying a holding that the recommendations which the Commission is directed to "make public from time to time," are a condition precedent to invoking the procedure of § 11 (b) (1) to compel integration. If completion of ex parte studies under § 30 were a prerequisite to action under § 11 (b), it should equally be so to action under § 11 (e) or under § 10 (c) (1), 15 USCA § 79j (c) (1). Since such studies and recommendations are apparently to be made "from time to time" throughout the life of the Commission, to hold that enforcement of other provisions of the statute are dependent on completion of the studies would defer their enforcement indefinitely. We cannot impute such an intention to Congress. If it be argued that enforcement as to a particular holding company should be deferred until a study has been made and recommendations published as to it, a sufficient answer is that the company must be accorded a hearing before integration can be ordered. We are satisfied that § 30 should be construed merely as an administrative direction to the Commission, not as a condition precedent to conducting a proceeding under § 11 (b) (1). Compare United States v. Morgan (1911) 222 US 274, 56 L ed 198, 32 S Ct 81. For a discussion of the specific point see Commonwealth & Southern Corporation.[3]

[2, 3] We now turn to the petitioner's contentions relating to the interpretation and application of § 11 (b) (1). The first is as to selection of a single integrated public utility system to be retained (which may conveniently be called the "principal" system). The selection of a principal system must naturally precede any final determination of what "other businesses" are "reasonably incidental or economically necessary or appropriate to the operations of such" principal system, as well as what "additional integrated public utility systems" the holding company is to be permitted "to continue to control." Where, as in this case, there are found to be several integrated public utility systems,[4] any one of which might reasonably be chosen as the principal system, is the choice to be made by the holding company or by the Commission? We may assume, without so deciding, that the privilege of selecting its principal system should, during preliminary stages of the § 11 (b) (1) proceeding, be

[3] CCH Fed Securities Law Service, 1943, § 75,285.

[4] The Commission found that the electric operations in each of the areas centering at St. Louis, Washington, Cleveland, Detroit, and Wisconsin, respectively, constitute a single integrated public utility system within the meaning of the act. North American's contentions in the aspect now under discussion are confined to the St. Louis, Cleveland, and Wisconsin systems.

accorded the holding company. This was done and only after North American had refused to express a preference between the several integrated public utility systems, was the St. Louis system selected by the Commission as the principal system for retention. No contention is made that the Commission made an unreasonable selection or that the selection of a different system would be more beneficial to North American. Its argument is merely that it cannot now tell which two of the three systems (St. Louis, Cleveland, and Wisconsin) will be most marketable; that § 11 (c) gives it at least one year for compliance with the divestment order; and therefore it may select its principal system at any time within the period allowed for compliance. We do not think the statute contemplates such deferment of selection. It would necessarily result in delays. The Commission's duty is to act under § 11 (b) "as soon as practicable," and due diligence in complying with the order is prescribed by § 11 (c). Nor do we see that deferment in selecting the principal system is necessary to adequate protection of a holding company against circumstances which may arise during the period allowed for compliance with the order. If changes occur in "the conditions upon which the order was predicated," the Commission is authorized by subsection (b) to revoke or modify any order previously made thereunder. Under the circumstances disclosed by this record we see no error in the Commission's selection of the St. Louis system as the principal system for retention.

[4, 5] It is next contended that the Commission erred in limiting North American to the retention of a single integrated system; that under the (A), (B), (C) standards of § 11 (b) (1), properly interpreted and applied, it is entitled to retain as additional or secondary systems the groups of subsidiaries which constitute the Cleveland and the Wisconsin systems. The (A) standard requires a finding that the additional system cannot be operated independently "without the loss of substantial economies which can be secured by the retention of control" by the holding company. It has been the practice of North American to furnish financial advice and, on occasions, direct financial assistance to its subsidiaries, and to sponsor the interchange of statistics and operating information among them. Such practices, it is urged, have been of great value to the Cleveland and the Wisconsin systems and a discontinuance of their relations with North American will cause them the loss of "substantial economies." After considering these arguments and the evidence presented in their support, the Commission refused to find that the additional systems could not be operated independently without the loss of substantial economies. Whether economy is achieved by centralized control is always a doubtful question and one peculiarly fitted for decision by an administrative agency staffed by experts. On such an issue a court cannot review or reweigh the evidence. See Morgan Stanley & Co. v. Securities and Exchange Commission (1942) 126 F(2d) 325, 43 PUR (NS) 240; § 24 (a) of the act, 45 USCA § 79x (a). With the Commission's ruling that "substantial economies" means important economies

and not merely something more than nominal, we are in accord.

[6] The Commission also found that neither additional system met the (C) standard. But we need not consider the correctness of this ruling, nor the interpretation placed upon clause (B), because the failure to satisfy the requirements of clause (A) precludes retention of the additional systems, since all three clauses must be satisfied to secure the right to retain more than the primary system.

[7] North American complains that divestment has been ordered of its investments in three nonuntility companies and that this has resulted from an erroneous construction of the "other business" clauses of § 11 (b) (1). The section requires a registered holding company to limit its operations to a single integrated public utility system, "and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system." Then follows the proviso dealing with additional integrated public utility systems, and next comes the following provision:

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public utility systems the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

The Commission interpreted these "other business" clauses to permit retention only when it affirmatively appears "that the public interest will be furthered by retention of a nonutility interest by reason of its relation 'to economy of management and operation' of a public utility system or systems or 'the integration and coördination of related operating properties.'" This conclusion is consonant with the policy of the act expressed in § 1 (b) (4), 15 USCA § 79a (b) (4) which declares that "the national public interest" is or may be adversely affected "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coördination of related operating properties." We agree with the Commission's interpretation. It is apparently not disputed that the three other businesses are unrelated to the operations of the St. Louis system. Consequently no error appears in ordering their divestment.

[8–10] There remains for consideration the petitioner's attack upon the constitutional validity of § 11 (b) (1). It is urged that under the commerce clause of the Constitution, Art. I, § 8, cl. 3, Congress does not possess the power it has sought to exercise by this section of requiring a registered holding company to divest itself of all securities other than those related to a single integrated public utility system. Many of North American's subsidiaries are engaged in interstate commerce, but the ownership of securities issued by them does not of itself constitute engaging in interstate commerce; the ownership of property is characteristically an intrastate matter. Such ownership can be

asserted to be subject to congressional regulation under the commerce clause only on the ground that it so affects interstate commerce as to make regulation of it an appropriate means to the attainment of a legitimate end. See United States v. Wrightwood Dairy Co. (1942) 315 US 110, 119, 86 L ed 726, 62 S Ct 523; United States v. Darby (1941) 312 US 100, 118, 85 L ed 609, 61 S Ct 451, 132 ALR 1430. Counsel argues that § 11 (b) (1) does not make such effect the test of its application; it assumes that the mere fact that a holding company has registered under § 5[5] of the act indicates a sufficient relationship to interstate commerce to support the asserted power, and it provides for divestment orders without any specific finding by the Commission or by a court that the company is engaged in interstate commerce or that interstate commerce will be adversely affected by retention of the securities it owns. But we think the necessity for such specific finding is eliminated by the statutory scheme. Section 1 expounds the policy underlying the necessity for control of holding companies as defined in § 2(a)(7), 15 USCA § 79b (a)(7). It declares them to be affected with a national public interest because, among other things, "their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage,"[6] and the extension of their activities over many states makes difficult, if not impossible, effective state regulation of public utility companies.[7] It is further declared that the national public interest is or may be adversely affected when the growth and extension of holding companies bear no relation to economy of management and operation or the integration and coördination of related operating properties.[8] Section 3 provides administrative procedure by which a holding company can obtain exemption from any provision of the act, if it and its subsidiaries are predominantly intrastate in character.[9] North American did not avail itself of this administrative remedy, nor does it now assert that it is entitled to exemption. On the contrary its activities and those of its subsidiaries clearly bring it within the class of holding companies which § 1 declares affect interstate commerce and require regulation. Hence the essence of the petitioner's argument comes down to the contention that the retention of securities, which § 11(b) (1) assumes to regulate, is a purely intrastate matter and beyond congressional power.

That the power of Congress to regulate interstate commerce extends to regulation through legislative action of activities intrastate which have a substantial effect on the commerce cannot be, and is not, disputed. In United States v. Darby, *supra*, 312 US 100, at p. 120, the court noted that in such legislation determination whether the intrastate activities have the prohibited effect on the interstate commerce, has sometimes been left to the courts, sometimes to an administrative tribunal, and "sometimes Con-

[5] 15 USCA § 79e.
[6] Section 1(a)(4), 15 USCA § 79a(a)(4).
[7] Section 1(a)(5), 15 USCA § 79a(a)(5).
[8] Section 1(b)(4), 15 USCA § 79a(b)(4).
[9] Section 3(a)(1) and (2), 15 USCA § 79c (a)(1) and (2).

gress itself has said that a particular activity affects the commerce. . . ." The statute there under discussion, like the one now before us, belonged to the class last mentioned. In passing on the validity of that class of legislation the opinion states that "the only function of the courts is to determine whether the particular activity regulated or prohibited is within the reach of the Federal power." To what extent that power can reach has been very recently demonstrated by Wickard v. Filburn, 317 US —, 87 L ed —, 63 S Ct 82, decided November 9, 1942. There it was held that a small farmer's production of wheat for his own use could be regulated under the Agricultural Adjustment Act of 1938, as amended, because in the aggregate the consumption of homegrown wheat by many small farmers affects the price and market conditions of wheat transported between the states. If the commerce clause has a sweep so broad as that, we cannot say that Congress has exceeded its power in regulating the ownership of securities by a holding company whose subsidiaries are engaged in interstate commerce.

[**11, 12**] The final argument is that § 11(b)(1) violates the Fifth Amendment. The guaranty of due process demands only that the law shall not be "unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." Nebbia v. New York (1934) 291 US 502, 525, 78 L ed 940, 2 PUR(NS) 337, 344, 54 S Ct 505, 89 ALR 1469. The object sought by the statute under consideration is the elimination of abuses in the public utility holding company field. It is argued that the divestment of securities required by § 11 is not a reasonable means to that end because it will involve a destruction of values. We do not think the argument can prevail. Congress did not think it could accomplish its object solely by regulating future transactions, although many of the provisions of the act apply only to them. To eliminate existing conditions which adversely affect the public interest Congress considered it necessary to enact § 11. The means selected are clearly adapted to the end in view. The wisdom of the legislation and the appropriateness of the remedy chosen is not the concern of the courts. See Sunshine Anthracite Coal Co. v. Adkins (1940) 310 US 381, 394, 84 L ed 1263, 60 S Ct 907. Compelling the holding company to dispose of its securities is not the same as condemning private property for public use without paying just compensation. Under § 11 (c) the petitioner is given a year within which to comply with the order and may on proper showing obtain an additional period not exceeding one year. If divestment can be effected by distribution in kind, there may be no loss in values. If, as petitioner contends, such distribution will be impossible and a liquidation by sale becomes necessary, the process may be painful to its common stockholders, but we cannot say that the remedy selected by Congress is so unreasonable, arbitrary, or capricious as to constitute taking property without due process.

Orders affirmed.

UNITED STATES SUPREME COURT

Securities and Exchange Commission

v.

Chenery Corporation et al.

[No. 254.]

(317 US —, 87 L ed —, 63 S Ct 454.)

Appeal and review, § 53 — Grounds for reversal or affirmance — Basis for Commission's decision.

1. The validity of a Commission decision, purported to be based on equitable principles, that preferred stock of a holding company purchased by officers and directors while reorganization plans were before the Commission should not participate on a parity with other preferred stock, must be judged on the basis of the grounds upon which the Commission itself based its action, p. 20.

Appeal and review, § 28.1 — Conclusiveness of findings — Federal Commission.

2. An appellate court, in reviewing a decision of the Securities and Exchange Commission, cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency, either for the purpose of affirming or for reversing its orders, p. 20.

Corporations, § 16 — Officers and directors — Dealing in corporation's stock.

3. The courts do not impose upon officers and directors of a corporation any fiduciary duty to its stockholders which precludes them, merely because they are officers and directors, from buying and selling the corporation's stock, p. 20.

Corporations, § 22 — Reorganization — Participation — Officers and directors — Dealing in corporation's stock.

4. Established judicial principles do not require that preferred stock of a holding company purchased by officers and directors while reorganization plans were before the Securities and Exchange Commission should not participate on a parity with other preferred stock, if it is not found that the specific transactions under scrutiny showed misuse by them of their position as reorganization managers in that as such managers they took advantage of the corporation or the other stockholders or the investing public, p. 20.

Appeal and review, § 53 — Grounds for affirmance — Possible findings not made.

5. The action of the Securities and Exchange Commission, based on an erroneous application of equitable principles, in denying to preferred stock of a holding company purchased by officers and directors while reorganization plans were before the Commission a participation on a parity with other preferred stocks, cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the Holding Company Act, p. 23.

UNITED STATES SUPREME COURT

Appeal and review, § 53 — Grounds for affirmance — Basis for administrative order.

6. An administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained, p. 24.

(BLACK, REED, and MURPHY, JJ., dissent.)

[February 1, 1943.]

CERTIORARI *to review judgment of United States Court of Appeals for the District of Columbia setting aside a Commission order relating to participation in a reorganization plan; cause remanded to Court of Appeals with directions to remand to Commission for further proceedings. For decision by Court of Appeals, see (1942) — App DC —, 44 PUR(NS) 138, 128 F(2d) 303, and for decisions by Commission, see (1941) 41 PUR(NS) 321 and 41 PUR(NS) 361.*

APPEARANCES: Chester T. Lane, Washington, D. C., for petitioner; Spencer Gordon, Washington, D. C., for respondent.

Mr. Justice FRANKFURTER delivered the opinion of the court: The respondents, who were officers, directors, and controlling stockholders of the Federal Water Service Corporation (hereafter called Federal), a holding company registered under the Public Utility Holding Company Act of 1935, Chap. 687, 49 Stat. 803, 15 USCA § 79, brought this proceeding under § 24(a) of the act, 15 USCA § 79x(a), to review an order made by the Securities and Exchange Commission on September 24, 1941, 41 PUR(NS) 361, approving a plan of reorganization for the company. Under the Commission's order, preferred stock acquired by the respondents during the period in which successive reorganization plans proposed by the management of the company were before the Commission, was not permitted to participate in the reorganization on an equal footing with all other preferred stock. The court of appeals for the District of Columbia, with one judge dissenting, set the Commission's order aside (1942) — App DC —, 44 PUR(NS) 138, 128 F (2d) 303, and because the question presented looms large in the administration of the act, we brought the case here.

The relevant facts are as follows: In 1937 Federal was a typical public utility holding company. Incorporated in Delaware, its assets consisted of securities of subsidiary water, gas, electric, and other companies in thirteen states and one foreign country. The respondents controlled Federal through their control of its parent, Utility Operators Company, which owned all of the outstanding shares of Federal's Class B common stock, representing the controlling voting power in the company. On November 8, 1937, when Federal registered as a holding company under the Public Utility Holding Company Act of 1935, its management filed a plan for reorganization under §§ 7 and 11 of the act, 15 USCA §§ 79g, 79k, the relevant portions of which are copied in the

margin.[1] This plan, as well as two other plans later submitted by Federal, provided for participation by Class B stockholders in the equity of the proposed reorganized company. This feature of the plans was unacceptable to the Commission, and all were ultimately withdrawn. On March 30, 1940, a fourth plan was filed by Federal. This plan, proposing a merger of Federal, Utility Operators Company, and Federal Water and Gas Corporation, a

[1] "Section 7. (a) A registered holding company or subsidiary company thereof may file a declaration with the Commission, regarding any of the acts enumerated in subsection (a) of § 6, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such declaration shall include—

"(1) such of the information and documents which are required to be filed in order to register a security under § 7 of the Securities Act of 1933 (15 USCA § 77g) as amended, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

"(2) such additional information, in such form and detail, and such documents regarding the declarant or any associate company thereof, the particular security and compliance with such state laws as may apply to the act in question as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. . . .

"(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

. . . . . .

"(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

"(e) If the requirements of subsection (g) are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

"(f) Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section. . . .

"Section 11. (a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public utility system.

. . .

"(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of § 18 (15 USCA § 79r), to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed."

wholly owned inactive subsidiary of Federal, contained no provision for participation by the Class B stock. Instead, that class of stock was to be surrendered for cancellation, and the preferred and Class A common stock of Federal were to be converted into common stock of the new corporation. As the Commission pointed out in its analysis of the proposed plan, "except for the 5.3 per cent of new common allocated to the present holders of Class A stock, substantially all of the equity of the reorganized company will be given to the present preferred stockholders."

During the period from November 8, 1937, to June 30, 1940, while the successive reorganization plans were before the Commission, the respondents purchased a total of 12,407 shares of Federal's preferred stock. (The total number of outstanding shares of Federal's preferred stock was 159,269.) These purchases were made on the over-the-counter market through brokers at prices lower than the book value of the common stock of the new corporation into which the preferred stock would have been converted under the proposed plan. If this feature of the plan were approved by the Commission, the respondents through their holdings of Federal's preferred stock would have acquired more than 10 per cent of the common stock of the new corporation. The respondents frankly admitted that their purpose in buying the preferred stock was to protect their interests in the company.

In ascertaining whether the terms of issuance of the new common stock were "fair and equitable" or "detrimental to the interests of investors" within § 7 of the act, the Commission found that it could not approve the proposed plan so long as the preferred stock acquired by the respondents would be permitted to share on a parity with other preferred stock. The Commission did not find fraud or lack of disclosure, but it concluded that the respondents, as Federal's managers, were fiduciaries and hence under a "duty of fair dealing" not to trade in the securities of the corporation while plans for its reorganization were before the Commission. It recommended that a formula be devised under which the respondents' preferred stock would participate only to the extent of the purchase prices paid plus accumulated dividends since the dates of such purchases. Accordingly, the plan was thereafter amended to provide that the preferred stock acquired by the respondents, unlike the preferred stock held by others, would not be converted into stock of the reorganized company, but could only be surrendered at cost plus 4 per cent interest. The Commission, over the respondents' objections, approved the plan as thus amended, and it is this order which is now under review.

We completely agree with the Commission that officers and directors who manage a holding company in process of reorganization under the Public Utility Holding Company Act of 1935 occupy positions of trust. We reject a lax view of fiduciary obligations and insist upon their scrupulous observance. See Wormley v. Wormley (1823) 8 Wheat. 421, 441, 5 L ed 651; Southern P. Co. v. Bogert (1919) 250 US 483, 487, 63 L ed 1099, 39 S Ct 533; and see Stone, The Public Influence of the Bar (1934) 48 Harv L Rev 1, 8, 9. But to say

that a man is a fiduciary only begins analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary? In what respect has he failed to discharge these obligations? And what are the consequences of his deviation from duty?

The Commission did not find that the respondent as managers of Federal acted covertly or traded on inside knowledge, or that their position as reorganization managers enabled them to purchase the preferred stock at prices lower than they would otherwise have had to pay, or that their acquisition of the stock in any way prejudiced the interests of the corporation or its stockholders. To be sure, the new stock into which the respondents' preferred stock would be converted under the plan of reorganization would have a book value—which may or may not represent market value—considerably greater than the prices paid for the preferred stock. But that would equally be true of purchases of preferred stock made by other investors. The respondents, the Commission tells us, acquired their stock as the outside world did, and upon no better terms. The Commission dealt with this as a specific case, and not as the application of a general rule formulating rules of conduct for reorganization managers. Consequently, it is a vital consideration that the Commission conceded that the respondents did not acquire their stock through any favoring circumstances. In its own words, "honesty, full disclosure, and purchase at a fair price" characterized the transactions. The Commission did not suggest that, as a result of their purchases of preferred stock, the respondents would be unjustly enriched. On the contrary, the question before the Commission was whether the respondents, simply because they were reorganization managers, should be denied the benefits to be received by the 6,000 other preferred stockholders. Some technical rule of law must have moved the Commission to single out the respondents and deny their preferred stock the right to participate equally in the reorganization. To ascertain the precise basis of its determination, we must look to the Commission's opinion.

The Commission stated, 41 PUR (NS) at p. 341, that "in the process of formulation of a 'voluntary' reorganization plan, the management of a corporation occupies a fiduciary position toward all of the security holders to be affected, and that it is subjected to the same standards as other fiduciaries with respect to dealing with the property which is the subject matter of the trust." Applying by analogy the restrictions imposed on trustees in trafficking in property held by them in trust for others, Michoud v. Girod (1846) 4 How. 503, 557, 11 L ed 1076, the Commission ruled that even though the management does not hold the stock of the corporation in trust for the stockholders, nevertheless the "duty of fair dealing" which the management owes to the stockholders is violated if those in control of the corporation purchase its stock, even at a fair price, openly and without fraud. The Commission concluded that "honesty, full disclosure, and purchase at a fair price do not take the case outside the rule."

[1, 2] In reaching this result the Commission stated that it was merely applying "the broad equitable principles enunciated in the cases heretofore cited," namely, Pepper v. Litton (1939) 308 US 295, 84 L ed 281, 60 S Ct 238; Michoud v. Girod, *supra;* Magruder v. Drury (1914) 235 US 106, 119, 120, 59 L ed 151, 35 S Ct 77, and Meinhard v. Salmon (1928) 249 NY 458, 164 NE 545. Its opinion plainly shows that the Commission purported to be acting only as it assumed a court of equity would have acted in a similar case. Since the decision of the Commission was explicitly based upon the applicability of principles of equity announced by courts, its validity must likewise be judged on that basis. The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.

In confining our review to a judgment upon the validity of the grounds upon which the Commission itself based its action, we do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct "although the lower court relied upon a wrong ground or gave a wrong reason." Helvering v. Gowran (1937) 302 US 238, 245, 82 L ed 224, 58 S Ct 154. The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate. But it is also familiar appellate procedure that where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment. For purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency.

[3, 4] If, therefore, the rule applied by the Commission is to be judged solely on the basis of its adherence to principles of equity derived from judicial decisions, its order plainly cannot stand. As the Commission concedes here, the courts do not impose upon officers and directors of a corporation any fiduciary duty to its stockholders which precludes them, merely because they are officers and directors, from buying and selling the corporation's stock.[2] The cases upon which the Commission relied do not establish principles of law and equity which in themselves are sufficient to sustain its order. The only question in Pepper v. Litton, *supra,* 308 US at p. 296, was whether claims obtained by the controlling stockholders of a bankrupt corporation were to be treated equally with the claims of other creditors where the evidence revealed "a scheme to defraud creditors remi-

[2] See 1 Dodd and Baker, Cases on Business Associations (1940) 498–500, 583–86, 621–22; 1 Morawetz on Private Corporations (2d ed. 1886) §§ 516–21, pp. 482–89.

niscent of some of the evils with which 13 Eliz. chap. 5 was designed to cope." Another case relied upon, Woods v. City Nat. Bank & Trust Co. (1941) 312 US 262, 85 L ed 820, 61 S Ct 493, held only that a bankruptcy court, in the exercise of its plenary power to review fees and expenses in connection with a reorganization proceeding under Chapter X of the Chandler Act, 52 Stat. 840, could deny compensation to protective committees representing conflicting interests. Michoud v. Girod, *supra,* and Magruder v. Drury, *supra,* dealt with the specific obligations of express trustees and not with those of persons in control of a corporate enterprise toward its stockholders.

Determination of what is "fair and equitable" calls for the application of ethical standards to particular sets of facts. But these standards are not static. In evolving standards of fairness and equity, the Commission is not bound by settled judicial precedents. Congress certainly did not mean to preclude the formulation by the Commission of standards expressing a more sensitive regard for what is right and what is wrong than those prevalent at the time the Public Utility Holding Company Act of 1935 became law. But the Commission did not in this case proffer new standards reflecting the experience gained by it in effectuating the legislative policy. On the contrary, it explicitly disavowed any purpose of going beyond those which the courts had theretofore recognized. Since the Commission professed to decide the case before it according to settled judicial doctrines, its action must be judged by the standards which the Commission itself invoked. And judged by those standards, i. e., those which would be enforced by a court of equity, we must conclude that the Commission was in error in deeming its action controlled by established judicial principles.

But the Commission urges here that the order should nevertheless be sustained because "the effect of trading by management is not measured by the fairness of individual transactions between buyer and seller, but by its relation to the timing and dynamics of the reorganization which the management itself initiates and so largely controls." Its argument lays stress upon the "strategic position enjoyed by the management in this type of reorganization proceeding and the vesting in it of statutory powers available to no other representative of security holders." It contends that these considerations warrant the stern rule applied in this case since the Commission "has dealt extensively with corporate reorganizations, both under the act, and other statutes entrusted to it," and "has, in addition, exhaustively studied protective and reorganization committees," and that the situation was therefore "peculiarly within the Commission's special administrative competence."

In determining whether to approve the plan of reorganization proposed by Federal's management, the Commission could inquire, under § 7(d)(6) and (e) of the act, whether the proposal was "detrimental to the public interest or the interest of investors or consumers," and, under § 11(e), whether it was "fair and equitable." That these provisions were meant to confer upon the Commission broad powers for the protection of the public plainly appears from the reports

of the congressional committees in charge of the legislation. The provisions of § 7 were "designed to give adequate protection to investors and consumers . . . and are in accord with the underlying purpose of the legislation to give to investors and consumers full protection against the deleterious practices which have characterized certain holding-company finance in the past." Sen. Rep. No. 621, 74th Cong. 1st Sess. p. 28. Similarly, the authority given the Commission by § 11 was intended to be responsive to the demands of the particular situations with which the Commission would be faced: "Under these subsections [11(d), (e), and (f)], Commission approval of reorganization plans and supervisions of the conditions under which such plans are prepared will make it impossible for a group of favored insiders to continue their domination over inarticulate and helpless minorities, or even as is often the case, majorities. . . ." Id., p. 33.

In view of this legislative history, reflecting the range of public interests committed to the care of the Commission, § 17(a) and (b), 15 USCA § 79q(a), (b), which requires officers and directors of any holding company registered under the act to file statements of their security holdings in the company and provides that profits made from dealing in such securities within any period of less than six months shall inure to the benefit of the company, cannot be regarded as a limitation upon the power of the Commission to deal with other situations in which officers and directors have failed to measure up to the standards of conduct imposed upon them by the act. The act vests in the officers and directors of a holding company registered under the act broad powers as representatives of all the stockholders. Besides the Commission, only the management can, under § 11, initiate a proceeding before the Commission to simplify the corporate structure and to effect a fair and equitable distribution of voting power among security holders. Only the management can amend the plan, and this it may do at any time; only the management can withdraw the plan, and this too it may do at will; and even after the Commission has approved a plan, it cannot be carried out without the consent of the management.

Notwithstanding § 17(a) and (b), therefore, the Commission could take appropriate action for the correction of reorganization abuses found to be "detrimental to the public interest or the interest of investors or consumers." It was entitled to take into account those more subtle factors in the marketing of utility company securities that gave rise to the very grave evils which the Public Utility Holding Act of 1935 was designed to correct. See the concurring opinion of Judge Learned Hand in Morgan Stanley & Co. v. Securities and Exchange Commission (1942) 126 F(2d) 325, 332, 43 PUR(NS) 240.

But the difficulty remains that the considerations urged here in support of the Commission's order were not those upon which its action was based. The Commission did not rely upon "its special administrative competence"; it formulated no judgment upon the requirements of the "public interest or the interest of investors or

consumers" in the situation before it. Through its preoccupation with the special problems of utility reorganizations the Commission accumulates an experience and insight denied to others. Had the Commission, acting upon its experience and peculiar competence, promulgated a general rule of which its order here was a particular application, the problem for our consideration would be very different. Whether and to what extent directors or officers should be prohibited from buying or selling stock of the corporation during its reorganization, presents problems of policy for the judgment of Congress or of the body to which it has delegated power to deal with the matter. Abuse of corporate position, influence, and access to information may raise questions so subtle that the law can deal with them effectively only by prohibitions unconcerned with the fairness of a particular transaction. But before transactions otherwise legal can be outlawed or denied their usual business consequences, they must fall under the ban of some standards of conduct prescribed by an agency of government authorized to prescribe such standards—either the courts or Congress or an agency to which Congress has delegated its authority. Congress itself did not proscribe the respondents' purchases of preferred stock in Federal. Established judicial doctrines do not condemn these transactions. Nor has the Commission, acting under the rule-making powers delegated to it by § 11 (e), promulgated new general standards of conduct. It purported merely to be applying an existing judge-made rule of equity. The Commission's determination can stand, therefore, only if it found that the specific transactions under scrutiny showed misuse by the respondents of their position as reorganization managers, in that as such managers they took advantage of the corporation or the other stockholders or the investing public. The record is utterly barren of any such showing. Indeed, such a claim against the respondents was explicitly disavowed by the Commission.

In view of the conditions imposed by the Commission in approving the plan, it is clear that the respondents were charged with violation of a positive command of law rather than with any moral wrong. If there had been a wrong, it would be against the stockholders from whom they purchased the preferred stock at less than the book value of the new stock—which, as we have already said, may or may not be its real value. But the Commission did not regard such stockholders as beneficiaries of the respondents' "trust" and hence entitled to restitution. The Commission did not undo the purchases deemed by it to have been made by the respondents in violation of their fiduciary obligations. Instead, the Commission confirmed the purchases and ordered that the stock be surrendered to the corporation.

[5] Judged, therefore, as a determination based upon judge-made rules of equity, the Commission's order cannot be upheld. Its action must be measured by what the Commission did, not by what it might have done. It is not for us to determine independently what is "detrimental to the public interest or the interest of investors or consumers" or "fair or equitable" within the meaning of §§ 7 and 11 of

the Public Utility Holding Company Act of 1935. The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the act. There must be such a responsible finding. Compare United States v. Chicago, M. St. P. & P. R. Co. (1935) 294 US 499, 510, 79 L ed 1023, 55 S Ct 462. There is no such finding here.

[6] Congress has seen fit to subject to judicial review such orders of the Securities and Exchange Commission as the one before us. That the scope of such review is narrowly circumscribed is beside the point. For the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review. If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the agency—of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so. But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law. In either event the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained. "The administrative process will best be vindicated by clarity in its exercise." Phelps Dodge Corp. v. National Labor Relations Board (1941) 313 US 177, 197, 85 L ed 1271, 61 S Ct 845, 133 ALR 1217. What was said in that case is equally applicable here: "We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board." Ibid. Compare United States v. Carolina Freight Carriers Corp. (1942) 315 US 475, 488, 86 L ed 971, 43 PUR(NS) 423, 62 S Ct 722. In finding that the Commission's order cannot be sustained, we are not imposing any trammels on its powers. We are not enforcing formal requirements. We are not suggesting that the Commission must justify its exercise of administrative discretion in any particular manner or with artistic refinement. We are not sticking in the bark of words. We merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained.

The cause should therefore be remanded to the court of appeals with directions to remand to the Commission for such further proceedings, not inconsistent with this opinion, as may be appropriate.

So *ordered.*

Mr. Justice Douglas took no part in the consideration and decision of this case.

Mr. Justice BLACK, with whom Mr. Justice REED and Mr. Justice MURPHY concur, dissenting: For reasons set out in the court's opinion and the dissenting opinion below, I agree that these respondents, officers, and direc-

tors of the corporations seeking reorganization, acted in a fiduciary capacity in formulating and managing plans they submitted to the Commission, and that, as fiduciaries, they should be held to a scrupulous observance of their trust. I further agree that Congress conferred on the Commission "broad powers for the protection of the public," investors and consumers; and that the Commission, not the court, was invested by Congress with authority to determine whether a proposed reorganization or merger would be "fair and equitable," or whether it would be "detrimental to the public interest or the interest of investors or consumers."

The conclusions of the court with which I disagree are those in which it holds that while the Securities and Exchange Commission has abundant power to meet the situation presented by the activities of these respondents, it has not done so. This conclusion is apparently based on the premise that the Commission has relied upon the common law rather than on "new standards reflecting the experience gained by it in effectuating legislative policy," and that the common law does not support its conclusion; that the Commission could have promulgated "a general rule of which its order here was a particular application," but instead made merely an ad hoc judgment; and that the Commission made no finding that these practices would prejudice anyone.

The Commission's actual finding was that "The plan of reorganization herein considered, like the previous plans filed with us over the past several years, was formulated by the management of Federal, and discussions concerning the reorganization of this corporation have taken place between the management and the staff of the Commission over the past several years"; that C. T. Chenery purchased 8,618 shares of preferred stock during this period; that other officers and directors of the concerns involved acquired 3,789 shares during the same period; that for this stock these respondent fiduciaries paid $328,346.89 and then submitted their latest reorganization plan, under which this purchased stock would have a book value in the reorganization company of $1,162,431.90. In the light of these and other facts the Commission concluded that the new plan would be "unfair, inequitable, and detrimental so long as the preferred stock purchased by the management at low prices is to be permitted to share on a parity with other preferred stock." The Commission declined to give "effectiveness" to the proposed plan and entered "adverse findings" against it under §§ 7(d)(1) and 7(d)(2) of the controlling act, resting its refusal to approve on this statement: "We find that the provisions for participation by the preferred stock held by the management result in the terms of issuance of the new securities being detrimental to the interests of investors and the plan being unfair and inequitable."

The grounds upon which the Commission made its findings seem clear enough to me. Accepting as the court does the fiduciary relationship of these respondents in managing the Commission proceedings, it follows that their peculiar information as to the stock values under their proposed plan afforded them opportunities for stock purchase profits which other stock-

holders did not have. While such fiduciaries, they bought preferred stock and then offered a reorganization plan which would give this stock a book value of four times the price they had paid for it. What the Commission has done is to say that no such reward shall be reaped by these fiduciaries. At the same time they are permitted to recover the full purchase price with interest. To permit their reorganization plan to put them in the same position as the old stockholders gives to these fiduciaries an unconscionable profit for trading with inside information.

I can see nothing improper in the Commission's findings and determinations. On the contrary, the rule they evolved appears to me to be a salutary one, adequately supported by cogent reasons and thoroughly consistent with the high standards of conduct which should be required of fiduciaries. That the Commission saw fit to draw support for its own administrative conclusion from decisions of courts should not detract from the validity of its findings. Entrusted as the Commission is with the responsibility of lifting the standard of transactions in the market place in order that the managers of financial ventures may not impose upon the general investing public, it seems wholly appropriate that the Commission should have recognized the influence of admonitory language like the following it approvingly quoted from Meinhard v. Salmon (1928) 249 NY 458, 164 NE 545, 546:

"A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd."

The decisions cited by the Commission seem to me to show the soundness of the conclusion it reached. As judges we are entitled to a sense of gratification that the common law has been able to make so substantial a contribution to the development of the administrative law of this field. See e. g. Pepper v. Litton (1939) 308 US 295, 84 L ed 281, 60 S Ct 238; Michoud v. Girod (1846) 4 How. 503, 11 L ed 1076; Magruder v. Drury (1914) 235 US 106, 59 L ed 151, 35 S Ct 77. Of course, the Commission is not limited to common-law principles in protecting investors and the public but even if it were so limited the Magruder Case would in my opinion provide complete support for the position taken by the Commission: "The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity. . . . It makes no difference that the estate was not a loser in the transaction, or that the commission was no more than the services were reasonably worth." 235 US at pp. 119, 120. The distinction now seen by the court between these cases and the instant problem comes to little more than that the fact situations are similar but not identical.

While I consider that the cases on which the Commission relied give full support to the conclusion it reached, I

do not suppose, as the court does, that the Commisison's rule is not fully based on Commission experience. The Commission did not "explicitly disavow" any reliance on what its members had learned in their years of experience, and of course they, as trade experts, made their findings that respondent's practice was "detrimental to the interests of investors" in the light of their knowledge. That they did not unduly parade fact data across the pages of their reports is a commendable saving of effort since they meant merely to announce for their own jurisdiction an obvious rule of honest dealing closely related to common law standards. Of course, the Commission can now change the form of its decision to comply with the court order. The court can require the Commission to use more words; but it seems difficult to imagine how more words or different words could further illuminate its purpose or its determination. A judicial requirement of circumstantially detailed findings as the price of court approval can bog the administrative power in a quagmire of minutiae. Hypercritical exactions as to findings can provide a handy but an almost invisible glideway enabling courts to pass "from the narrow confines of law into the more spacious domain of policy." Phelps Dodge Corp. v. National Labor Relations Board, *supra,* 313 US at p. 194. Here for instance, the court apparently holds that the Commission has full power to do exactly what it did; but the court sends the matter back to the Commission to revise the language of its opinion, in order, I suppose, that the court may reappraise the reasons which moved the Commission to determine that the conduct of these fiduciaries was detrimental to the public and investors. The act under which the Commission proceeded does not purport to vest us with authority to make such a reappraisal.

That the Commission has chosen to proceed case by case rather than by a general pronouncement does not appear to me to merit criticism. The intimation is that the Commission can act only through general formulae rigidly adhered to. In the first place, the rule of the single case is obviously a general advertisement to the trade, and in the second place the briefs before us indicate that this is but one of a number of cases in which the Commission is moving to an identical result on a broad front. But aside from these considerations the act gives the Commission wide powers to evolve policy standards, and this may well be done case by case, as under the Federal Trade Commission Act. Federal Trade Commission v. Keppel & Bro. (1934) 291 US 304, 310–312, 78 L ed 814, 54 S Ct 423, 79 ALR 1191.

The whole point of the Commission finding has been lost if it is criticized for a failure to show injury to particular shareholders. The Commission holding is that it should not "undertake to decide case by case whether the mangement's trading has in fact operated to the detriment of the persons whom it represents," because the "tendency to evil" from this practice is so great that the Commission desires to attach to it a conclusive presumption of impropriety.

The rule of the Commission adopted here is appropriate. Protection of investors from insiders was one of the

chief reasons which led to adoption of the law which the Commission was selected to administer.[3] That purpose can be greatly retarded by overmeticulous exactions, exactions which require a detailed narration of underlying reasons which prompt the Commission to require high standards of honesty and fairness. I favor approving the rule they applied.

[3] "Among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in their market activities. Closely allied to this type of abuse was the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others." Report of the Senate Committee on Banking and Currency on Stock Exchange Practices, Report No. 1455, 73d Cong. 2d Sess.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Pennsylvania Telephone Corporation

[Complaint Docket No. 13325.]

Service, § 466 — Telephones — Time limit on calls.

1. A telephone tariff providing that a subscriber to flat rate service may send an unlimited number of local messages, each of five minutes or less duration, to other stations within the same local service area does not show whether messages in excess of five minutes violate the company's rules and regulations or whether such a violation would be subject to automatic disconnection, p. 31.

Service, § 214 — Suspension of service — Automatic disconnection.

2. Suspension of telephone service is not synonymous with automatic disconnection during conversation within the meaning of a company rule permitting the suspension of service at the company's discretion for violation of company rules and regulations, p. 31.

Service, § 220 — Suspension — Notice of intention to abandon.

3. A telephone company rule permitting suspension of service without notice is contrary to Commission policy and precedent, p. 31.

Service, § 466 — Telephone service — Suspension provision in filed tariffs.

4. A telephone company's option to suspend or discontinue service according to its rules and regulations should be specifically provided for in its tariffs when such option is exercised in a manner which will extend privileges to certain groups or established grades of service, p. 31.

Service, § 466 — Telephones — Time limit on calls — Cut-off devices.

5. A telephone company's practice of terminating local exchange service to

individual line subscribers by the cut-off device after a limited period for conversation is violative of its rules and regulations as set forth in its filed and effective tariff and is unreasonable, arbitrary, and unlawful, p. 31.

Discrimination, § 229 — Telephone service — Differences in service.

6. The fact that telephone service rendered in exchanges equipped with an automatic cut-off differs from the type of service rendered on manual type or automatic dial type exchanges which are not equipped with automatic cut-offs does not constitute unreasonable discrimination, p. 34.

Service, § 466 — Telephones — Cut-off devices — Time limit on calls.

7. The failure of a telephone company to educate its subscribers in the proper use of the telephone or properly to police its service in accordance with ample provisions of its filed and effective tariff cannot be deemed a justifiable reason for the use of a cut-off device on local telephone service to all of its subscribers, p. 36.

Service, § 466 — Telephones — Cut-off devices — Wartime restrictions.

8. A telephone company's practice of terminating local messages to party-line subscribers by a cut-off may reasonably be continued for the duration of the war, in view of the fact that the company will be unable to obtain favorable priorities upon the trunking facilities and equipment which would be required in the event of discontinuance of operation of the cut-off device, p. 36.

[December 7, 1942.]

REHEARING *on complaint against telephone company practice of terminating local telephone messages by cut-off devices; discontinuance of practice of terminating local telephone messages to individual-line subscribers ordered, but termination of local messages to party-line subscribers for duration of war allowed.*

By the COMMISSION: Following the receipt of numerous complaints from subscribers on the Johnstown exchange of Pennsylvania Telephone Corporation, respondent, against the then recently established practice of terminating local telephone conversations at the expiration of a 6- to 8-minute period, the Commission deemed it advisable, in the public interest, to issue an order on February 6, 1940, instituting an investigation upon its own motion, under provisions of § 100 of the Public Utility Law, for the purpose of determining whether respondent's practice of terminating telephone service, as aforedescribed, is unreasonable and in violation of § 401 of the Public Utility Law; whether said practice is discriminatory and in violation of § 402 of the Public Utility Law; and whether said practice is in violation of the rules and regulations of respondent as contained in its filed and effective tariffs.

Following a hearing in the matter, the Commission issued an order on May 13, 1941, in which it was found that the aforementioned practice was in violation of respondent's rules and regulations as contained in its filed and effective tariff; that said practice was discriminatory and in violation of § 402 of the Public Utility Law; that

said practice was unreasonable and arbitrary and in violation of § 401 of the Public Utility Law; and in consequence thereof the Commission ordered respondent to discontinue its practice of terminating local telephone conversations on its Johnstown Exchange from and after June 1, 1941.

Respondent took an appeal from the Commission's order of May 13, 1941 to the superior court and, upon respondent's petition, such appeal was made a supersedeas. Subsequently, respondent petitioned said court to remand the record and proceedings to the Commission with directions to take after-discovered evidence. A rule to show cause was granted and on July 18, 1941, the court made the rule absolute.

The Commission held further hearings in the proceeding on September 29 and 30, 1941, and on July 1 and 2, 1942. Brief has been filed by respondent and the matter is before the Commission again for disposition.

Briefly, in 1938–1939, respondent constructed a new central office building in Johnstown and installed therein automatic dial equipment in lieu of the manually operated equipment previously used. The automatic dial equipment, including an automatic disconnection device for terminating certain local exchange calls at a minimum of six and a maximum of eight minutes, was placed in operation on April 22, 1939. Respondent's automatic cut-off generally consists of a common timing device which transmits impulses at 2-minute intervals. The impulses are received and totalized by various relays and when the total impulses correspond with the established time limit of six minutes, interrupter mechanism is actuated and certain local exchange messages are terminated. Depending upon the phase of the timing device when telephone connection is established, it is possible that the conversation may be terminated at a minimum of six minutes or at a maxium of eight minutes. Regardless of the actual length of the conversation before disconnection, a warning dial tone is transmitted one minute before termination of the connection.

At the time of the initial hearing, telephone stations in the Johnstown area were connected to either of two exchanges, namely, Moxham and Johnstown.

In the Johnstown exhange the automatic cut-off feature applied to some extent to all grades and classes of exchange service but did not apply to toll service. As to the extent of the cut-off feature, intra-exchange communications over individual and party lines were subject to cut-off except that originating communications over such lines to subscribers having private branch exchange facilities or having one or more trunks terminating in a rotary group were not subject to cut-off. Intra-exchange communications originating from private branch exchange facilities or rotary groups were subject to cut-off except in such instances where the terminating party likewise had installed private branch exchange facilities or was assigned to a rotary group.

At the time of the initial hearing the Moxham exchange was manually operated and intra-exchange communications were not subject to cut-off, while originating calls from the Moxham exchange to individual and party-

line subscribers on the Johnstown exchange were limited in duration by the cut-off device.

The augmented record in this proceeding now shows that respondent has continued and is currently operating the automatic disconnection device in the Johnstown exchange and, in addition, has converted its Moxham exchange from manual to automatic dial operation, including the aforementioned automatic disconnecting practice, thus rendering similar service, and limitations thereon, in both the Johnstown and Moxham exchanges. Respondent has also constructed the Westmont exchange in the general Johnstown exchange area which is likewise equipped for automatic dial operation and automatic disconnection. With respect to service conditions and practices, respondent has discontinued its former practice of assigning subscribers to its rotary groups who are equipped with only one trunk line.

At this time respondent has about 30 exchanges throughout the service area, of which 16 exchanges, serving approximately 36 per cent of respondent's total stations, are equipped with the automatic cut-off. Prior to the installation of the cut-off features in the general Johnstown exchange area, respondent had installed the feature in 13 exchanges serving only 10 per cent of the company's total stations.

[1–5] Respondent avers that the operation of its automatic cut-off device is not in violation of its rules and regulations as established by its filed and effective tariffs. In support thereof, respondent avers that Original Sheet No. 7, § 27 of its effective Tariff, Pa PUC No. 28, defines a local message as: "A message five minutes or less in duration from a subscriber's telephone station to another telephone within the same local service area and furnished under the provisions of the exchange (and in the case of semipublic service, the exchange and toll) tariff applicable"; that the cut-off device does not terminate the conversation at the 5-minute interval but permits a local message of six to eight minutes' duration; and that the subscribers, upon disconnection, may extend local conversations by redialing. Respondent admits that if the cut-off practice is not in accordance with the provisions of its filed and effective tariff, the Commission has ample authority under the Public Utility Law to compel respondent to file a new tariff incorporating satisfactory rules and regulations.

The fact that respondent's cut-off permits conversation units of six to eight minutes' duration rather than the 5-minute limitation, allegedly permitted under respondent's interpretation of the rules and regulations of its effective tariff, is of no moment, except that it might support to some degree our belief that the cited definition was not intended to apply to the cut-off practice. Likewise, we are not impressed by the allegation that subscribers, upon disconnection of local messages by the device, may extend conversations by redialing. The record shows that rapid reconnection might be achieved by some prearranged scheme of the subscribers but that often the interrupted circuit is being used by other parties, which respondent contends elsewhere is one of the principal benefits of the device. As we see it, the question at this point is

whether the substitution of conversation units of limited duration in lieu of unlimited duration conversation units is established by respondent's effective tariff or whether such practice is in violation thereof.

The preceding definition of a local message was established in respondent's Tariff Pa. PUC No. 14, effective April 1, 1931, at which time respondent was not operating an automatic cut-off on any of its exchanges or limiting the length of local messages of flat rate subscribers by any other means. It was not until 1934 that respondent made its initial installation of the automatic cut-off on one of its exchanges. In respondent's other exchanges, which are not equipped at this time with the automatic cut-off, respondent does not impose any restriction upon the length of local messages to flat rate subscribers although it alleges that its tariff provides therefor.

While it may be true that respondent's effective tariff stipulates that a subscriber of flat rate service has the right to send an unlimited number of local messages, each of five minutes or less duration, to other stations within the same local service area, it is not clear whether messages in excess of five minutes are in violation of the company's rules and regulations nor is it clear that such a violation would be subject to automatic disconnection.

If respondent intended that the cited definition apply to its practice of automatic disconnection, the definition should have included the specific conditions under which service was subject to disconnection, otherwise the ambiguity of the definition renders it subject to various interpretations. For example, the effective governing schedule of The Bell Telephone Company of Pennsylvania, by far the largest telephone utility within the commonwealth, similarly defines a local message as a message of five minutes or less duration but extra minutes are considered by that company as separate local messages, each not exceeding five minutes in duration. The president of Meadville Telephone Company, a witness for respondent, testified that similar provisions are made in the tariffs of Meadville Telephone Company, limiting a local message to five minutes or less duration, but that such provision was made in order to permit the company to charge overtime on calls from public telephones or any other similarly measured service.

Since the cited definition does not specifically state the conditions under which respondent has the privilege, right, or authority to disconnect local messages exceeding five minutes' duration, we must look to other provisions of respondent's effective tariff as to conditions under which the company is legally permitted to discontinue or suspend service. In the rules and regulations of respondent's effective tariff we find the following:

(a) "The telephone company may disconnect without advance notice any telephone which is used in such a manner as to interfere with the service of other telephone users or that is used for any purpose other than as a means of communication. Following such disconnection the company will immediately notify the telephone subscriber thereof.

(b) "In the event of the abandonment of the station, the nonpayment

of any sum due, the failure to make a deposit as security for the payment of future bills for telephone service when required, *or any other violation by the subscriber of the rules and regulations* under which service is furnished, *the telephone company may, without notice, suspend the service* until all charges due to the time of the restoration of service, including the established monthly rental charge for the service during the period of partial or complete suspension for nonpayment, have been paid and all violations have ceased, or terminate the service without suspension of service or following suspension, and sever the connection and remove its equipment from the subscribers' premises." (Italics supplied.)

The latter tariff provision (b) permits respondent to suspend telephone service at its discretion for violation of the company's rules and regulations but in this instance we do not consider suspension as synonymous with automatic disconnection. In this connection it is noted that the latter rule permits suspension of service without notice to the telephone subscriber. This rule is contrary to the policy of the Commission and many precedents that have been established in Commission orders which hold that service can be suspended only after reasonable notice to subscribers or patrons. In compliance with the orders of the Commission hereinafter set forth, respondent shall file, and make effective, tariff changes which will remove this objectionable feature of its rules and regulations pertaining to suspension of service.

It therefore appears that the only applicable tariff provision is the one which permits disconnection if a telephone is used in such a manner as to interfere with service to other users. Respondent's automatic cut-off does not discriminate between reasonable and unreasonable use of telephone service and it is therefore possible that local messages may be terminated even though there is no interference with service to other users. The record definitely shows that respondent's installation of the automatic cut-off was not motivated by a desire to eliminate interference to its subscribers, but that the device was primarily installed for the purpose of economy in the construction of the exchanges in the Johnstown area.

Notwithstanding, if it were assumed that the foregoing definition of a local message and rules applicable to suspension or disconnection of service established respondent's right to terminate local exchange service by the cut-off device, the fact remains, and respondent does not contend otherwise, that respondent is then rendering a class of local exchange service to private branch exchange and rotary subscribers different from the class of local exchange service to individual and party-line subscribers. This difference between classes of subscribers is not established by the effective tariff. It may be contended that respondent has the option of suspending or discontinuing service according to its rules and regulations but we believe that when such option is exercised in a manner which will extend privileges to certain groups or established grades of service, it is necessary that the tariff specifically provide therefor.

In either event, we find that respondent's practice of terminating tele-

phone service is in violation of the rules and regulations of respondent as set forth in its filed and effective tariffs and respondent will be directed hereinafter to file, post, and make effective appropriate tariff changes in accordance with subsequent findings of the Commission.

[6] Respondent avers that the automatic cut-off is not discriminatory and is not in violation of § 402 of the Public Utility Law, which provides:

"*Discrimination in Service*—No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but nothing herein contained shall be deemed to prohibit the establishment of reasonable classifications of service."

The record shows that the automatic cut-off is not installed and operated in all exchanges throughout respondent's service area and that in the manual type exchanges or dial exchanges not equipped with cut-off device, respondent does not exercise its alleged right to limit local messages to its subscribers, thereby allowing local messages of unlimited duration to 64 per cent of its subscribers and restricted local message service to 36 per cent of its total subscribers. As to whether this constitutes an unreasonable preference or advantage and conversely an unreasonable prejudice or disadvantage, respondent avers that in all recent conversions from manual type of operation to dial type of operation, the automatic cut-off device has been installed as a component part of the dial equipment and that if time and money are available respondent hopes that it will be allowed to use the automatic cut-off in the greater majority, if not all, of its exchanges. With respect to unlimited local message service on manual type exchanges, respondent avers that the cost of maintaining equipment and personnel for policing the circuits in such exchanges would be prohibitive. With respect to respondent's existing manual-type exchanges, it is manifest that automatic disconnection, as practiced on the Johnstown exchanges, must await the conversion of the exchanges from manual to dial-type operation. The record does not show whether all of respondent's automatic dial exchanges are equipped with the automatic cut-off but the record does show that the feature has been standard equipment in all recent conversions from manual to automatic dial-type equipment. Respondent believes that the automatic cut-off is an improvement in the telephone industry and in accordance with its beliefs it has installed such equipment in its recent conversions of manual to automatic dial-type exchanges and it is the stated policy of the company to install the device in its other exchanges as time and money permit. Whether the cut-off device is or is not an improvement to the telephone industry, it appears that respondent has considered such device as an improvement and has installed the device in accordance with a definite plan as conditions permitted.

Therefore, while it may be true that the service rendered in the Johnstown

exchanges and other exchanges similarly equipped with the automatic cut-off is different from the type of service rendered on respondent's manual-type exchanges, or automatic dial-type exchanges, which are not equipped for automatic cut-off, we do not believe such differences in service between localities or exchanges can be considered unreasonable.

With respect to differences in service to various subscribers in the Johnstown exchanges, as effected by the automatic cut-off device, respondent avers that, although the time limit feature is not applied to the same extent to multiple lines terminating at private branch exchanges or rotary groups as to individual and party lines, such differences in service are reasonable and not in violation of § 402 of the Public Utility Law.

The Commission's preceding order of May 13, 1941, found that respondent's automatic disconnection practice was discriminatory and in violation of § 402 of the Public Utility Law. This finding was primarily predicated upon Commission's Exhibit No. 2, which shows that respondent assigned subscribers having only one trunk line, which in effect is an individual line, to its rotary groups, thus allowing terminating calls of unlimited duration to such subscribers while other individual line subscribers not assigned by respondent to the rotary groups were not permitted terminating calls of unlimited duration. This we believed to be unreasonable discrimination and in violation of the Public Utility Law and if the pertinent facts had not been changed by respondent since the issuance of our order of May 13, 1941, we would have again found such practice to be unreasonable discrimination and in violation of the Public Utility Law.

Although respondent on appeal alleged that the Commission had erred in the above finding, the subsequent record shows that upon investigation the company determined that the aforementioned practice was not "fair" and that it has since discontinued the practice.

Summarizing the extent of respondent's practice of automatic disconnection, it appears that all local messages to private branch exchanges or subscribers assigned to the rotary groups, regardless of the service classification of the originating party, are unlimited in duration while all local messages to the individual and party-line subscribers, regardless of source, are limited in duration. Thus the only difference in service, in so far as the time element, is that subscribers having more than one trunk line terminating in private branch exchanges or individual lines assigned to rotary groups are permitted to receive local messages of unlimited duration, while individual and party-line subscribers are permitted to receive local messages not exceeding six to eight minutes' duration.

In support of this difference between classes of consumers, respondent avers that the purpose of the time limit feature is to allow telephone lines to be cleared at reasonable intervals and that it is not necessary to have the cut-off upon local messages to private branch exchanges or subscribers assigned to the rotary group because there is usually at least one free line for incoming calls to subscribers having such facilities. This might be true with respect to calls between private branch exchanges and subscribers in

the rotary groups but it is not necessarily true of other unlimited calls from individual or party-line subscribers to private branch exchanges or rotary groups, inasmuch as the circuit of the individual or party-line subscriber may be the one that is being used unreasonably and should be cleared.

In support of the automatic cut-off, respondent introduced testimony of five officials of various independent telephone companies operating in Pennsylvania, New York, and Ohio. The record shows that in the independent telephone companies, represented by these witnesses, a total of 71 exchanges were equipped with automatic disconnection devices. In 35 of these exchanges the cut-off affects all subscribers to the same degree. In 7 exchanges the cut-off affects all classes of subscribers, except rural lines. In 29 exchanges or 41 per cent of the total exchanges equipped with cut-off feature the time limitation applies to all subscribers except service terminating in private branch exchanges having more than one trunk line.

Respondent contends that the differences in the application of the cut-off is nothing but a reasonable classification of service and that the "classification of not making the multiple lines subject to the time feature is under the uncontradicted testimony in this case entirely reasonable." It appears that respondent has forgotten or misinterpreted the testimony of the aforementioned officials of independent telephone companies with respect to their application of the cut-off feature and particularly the testimony of William C. Henry of Northern Ohio Telephone Company, stating that his company's cut-off applied to all classes of service because "we think it is a good thing for any type of service, and should apply equally, and make the whole service available to anybody on the system."

Upon consideration of all the facts, particularly respondent's elimination of discrimination among individual line subscriber and the fact that respondent, under the present circumstances, is unable to entirely eliminate rationing of telephone service, we do not believe that respondent's present use of its automatic cut-off in the Johnstown exchanges can be considered unreasonably discriminatory with respect to its effects upon various classes of consumers but this finding does not imply that such service is reasonable or that such service should not be extended to other classes of users in accordance with our subsequent findings.

[7, 8] Respondent avers that its practice of terminating local message calls at the expiration of a 6- to 8-minute period is not unreasonable and arbitrary and in violation of § 401 of the Public Utility Law which provides:

"Character of Service and Facilities.—Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity

with the regulations and orders of the Commission. Subject to the provisions of this act and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . ."

In support of its position, respondent states that although some subscribers did testify at the initial hearings as to their dissatisfaction with the automatic cut-off feature, such complaints are common to any improvement in the telephone service; that the subscribers' reaction to the feature is much more favorable at the present time than at the time of the filing of complaints to the Commission; that at least 95 per cent of the subscribers on the Johnstown exchange are at the present time in favor of the time limit feature; that owners and operators of telephone companies and executives thereof, who are best qualified to judge the relative merits of the device, testified that the automatic cut-off is the greatest improvement in the telephone industry during the past decade; that the feature educates subscribers to the economical use of telephone equipment, thus requiring smaller investment in telephone plant, which in turn inures to the benefit of the subscribers by reason of a reduced rate base and return thereon; that the discontinuance of operation of the automatic cut-off would increase the average holding time approximately 20 per cent, thereby requiring the installation of additional trunking in order to render adequate service without the cut-off device; and that it is necessary to limit holding time in the present emergency although the feature is a distinct improvement in telephone service at any time.

Before commenting upon the foregoing averments, we deem it necessary to dispose of respondent's allegation on appeal to the superior court and in brief now before us, to the effect that the Commission approved the installation of automatic equipment in respondent's Johnstown exchange, thereby inferring that the Commission had full knowledge and approved respondent's intentions to enforce time limitations upon local message service in Johnstown. Since respondent's allegation, which is based upon matters not of record in this proceeding, may be intended to discredit the Commission's action in this matter, we merely mention the following self-serving pertinent facts.

In 1937 respondent filed an application with the Commission at A. 44545 for approval of the construction of a new telephone exchange building at Johnstown and the installation of automatic and other necessary equipment therein. Concurrently, respondent filed an application with the Commission at A. 44552 for approval of the borrowing of money by respondent from General Telephone Corporation for payment of a portion of the cost of the Johnstown exchange building and equipment. Upon investigation, the Commission issued certificates of public convenience evidencing Commission approval of both applications on December 13, 1937. The record in the aforementioned applications contains no evidence whatsoever of respondent's intentions to install the cut-off device or limit local message service by the use of auto-

matic exchange equipment and appurtenances.

It is possible that the automatic cut-off is an improvement in the telephone industry and that the device will find meritorious use by that industry under certain operating conditions. The records shows that the initial installation of automatic cut-off of North Electric Manufacturing Company was made in 1928 and since that time 228 installations of the device have been made in exchanges of independent telephone companies in 22 states, principally Indiana, Michigan, Minnesota, New York, Ohio, and Pennsylvania, as shown by respondent's Exhibit No. 9. Excluding respondent's Johnstown exchanges and other private or unlisted exchanges it appears from authoritative sources that the average number of stations on 204 of the 228 exchanges equipped with the cut-off device of North Electric Manufacturing Company is only 200; the smallest exchange having 34 stations while the largest installation at Sayre, Pennsylvania, has 2,451 stations. The device thus appears to be installed upon small rural and urban exchanges.

Various officials, owners, and operators of independent telephone companies generally testified, on behalf of respondent, to the effect that the device was a benefit to the telephone industry and subscribers' reaction to the device was universally favorable in the exchanges of the companies which were equipped with the device. When it is considered that the companies represented by the foregoing witnesses have a total of 71 exchanges equipped with the cut-off and that there are 19,000 to 20,000 stations in such exchanges, or an average of 260 to 280 stations per exchange, we are inclined to regard the testimony as pertinent to merits of the feature upon small exchanges but that such evidence does not prove that the device will permit adequate, efficient, safe, and reasonable service on respondent's Johnstown exchanges which have nearly the same number of stations as all of the 71 exchanges in the companies represented by the foregoing witnesess.

The Commission recognizes the fact that reasonable and proper standards of service in telephone companies may vary according to the number and relative proximity of the telephone subscriber, the uses of service, and the ability of subscribers to pay for the service. In order to render reasonable and proper telephone service upon small rural and urban exchanges, it may be necessary to install the automatic cut-off feature as a means of keeping within the economically justified investment in plant or as a means of equitably distributing service to multiparty line subscribers, which in the instance of rural service may involve ten to twenty-five parties upon a single circuit, but it does not necessarily follow that the elements which make the installation of the device reasonable in small rural and urban exchanges would therefore justify the installation of the device in large metropolitan exchanges.

Local telephone service has been furnished by large metropolitan exchanges within the commonwealth without the use of the cut-off device and without any significant showing of necessity or desirability of the cut-off on such service. The Bell Telephone Company of Pennsylvania and other Bell companies have not made

use of the cut-off device in any of the exchanges. It does not follow from any favorable showing of results of the cut-off device on small rural or urban exchanges furnishing service of a different type to subscribers bearing different characteristics that the cut-off device is necessary or desirable for local telephone service facilities in Johnstown and vicinity.

The installation of the device on the Johnstown exchanges has enabled the installation of a lesser amount of trunking facilities than would be required if the cut-off had not been installed or its use were discontinued. The saving in trunking facilities and equipment is estimated at $219,070.62. This saving in construction cost has not resulted in decreased charges for service to respondent Johnstown subscribers since the presently effective rates for local message service upon these exchanges are the same as those rates in effect prior to the installation of the cut-off. Conversely, there is nothing to indicate that the presently effective rates for local message service would be increased if the operation of the cut-off were discontinued and respondent required to build the additional trunking facilities and equipment.

The testimony of numerous telephone subscribers in the Johnstown area, expressing conflicting reactions and opinions of physicians, businessmen, labor representatives, newspapermen, and others prominent in professional, business, and social activities of the community, is of little aid to us in our determinations as to whether local message service as rendered on respondent's Johnstown exchanges is reasonable and adequate under § 401 of the Public Utility Law. The record in the initial hearing contains the testimony of nine witnesses to the effect that the automatic termination of local messages results in delay, inconvenience, and disconcerting interruptions. This testimony has been supplemented by testimony of three other subscribers to the same effect. The initial record also contains the testimony of one witness in favor of the device, which testimony has been supplemented by testimony to the same effect from twenty additional subscribers. There is no record whatsoever which substantiates respondent's assertion that at least 95 per cent of the subscribers in the Johnstown exchange are in favor of the time limit feature at this time.

It is to be expected that subscribers will react differently to the automatic cut-off. Certain subscribers, particularly those served through party lines, may welcome its use for the reason that the cut-off may permit a more equitable use of party-line facilities. However, it is clearly indicated that it is essential that uninterrupted service be available to certain subscribers who have a need for such service in their particular use of local telephone service. It is possible that subscribers may use local telephone service for desirable but unessential and unimportant purposes and may unreasonably use such service to the detriment of other subscribers, but the failure of respondent to educate its subscribers in the proper use of the telephone, or to properly police its service in accordance with ample provisions of its filed and effective tariff cannot be deemed a justifiable reason for the use

of the cut-off device on local telephone services to all of the subscribers.

Every telephone user, whether a subscriber to individual or party-line service, is a potential originator or receiver of local messages for which continuous and uninterrupted transmission is essential and we believe the needs of subscribers for such service should be reasonably anticipated and made available at all times. If it were not for respondent's subsequent evidence that it will be unable to obtain favorable priorities upon the trunking facilities and equipment which would be required in respondent's Johnstown exchanges in the event of discontinuance of operation of the cut-off device, our finding would be that respondent's service on its Johnstown exchanges is unreasonable and arbitrary and is in violation of § 401 of the Public Utility Law.

The testimony of a specialist of the War Production Board undoubtedly establishes the fact that respondent could not expect a favorable priority upon trunking equipment and facilities, the installation of which would be required upon respondent's Johnstown exchanges in the event of discontinuance of operation of the cut-off device. Therefore, it is necessary for respondent to ration telephone service upon the Johnstown exchanges for the duration of the present world conflict by the continued operation of the cut-off device. While it may be necessary for respondent to ration such service for the duration, it is expected that installed facilities will be used to the greatest practicable extent, consistent with accepted operating practices and regulations of agencies having jurisdiction in such matters.

Respondent's Johnstown exchange was designed for ninety seconds holding time. The record shows that respondent made tests of the experienced holding time on the Johnstown, Moxham, and Westmont exchanges in June, July, August, and September, 1941, at peak hours of 9 A. M. to 11 A. M., 2 P. M. to 4 P. M., and 7 P. M. to 9 P. M. The tests show that at the peak hours the average holding time was less than the design factor when the cut-off was in operation and that the average holding time was greater than the design factor when the operation of the cut-off was discontinued for test purposes. It was on the basis of the latter tests that respondent estimated that if the operation of the cut-off was entirely discontinued, the company would be required to install 25 per cent additional trunking facilities and equipment in its Johnstown exchanges in order to maintain the same grade of service that it is able to render with the cut-off in operation. Under the circumstances, we do not believe that the cut-off can be discontinued entirely but we believe that the record sufficiently indicates that the operation of the device can be discontinued to individual line subscribers, representing not more than 20 per cent of respondent's subscribers of flat rate service on the Johnstown exchanges. In this manner, we believe respondent will be able to make maximum use of its installed facilities as well as render a satisfactory standard of service to individual line subscribers. It is true that the extension of unlimited service to individual line subscribers is discriminatory but under the circumstances we do not believe that the differentiation in service is unreason-

able or unjust. Further, the extension of unlimited service to individual line subscribers will permit optional service to respondent's subscribers according to their need, desire, and willingness to pay for the class of service.

In view of the foregoing, we find that respondent's practice of terminating local messages to individual line subscribers on its Johnstown exchanges is unreasonable, arbitrary, and in violation of § 401 of the Public Utility Law and that the practice of terminating local messages to party-line subscribers is not unreasonable nor arbitrary and not in violation of § 401 of the Public Utility Law for the duration of the present emergency. Accordingly, this order relates to circumstances existing at this time and we will defer the final disposition of all of the matters involved in this proceeding to such time when the present emergency has ceased.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Capital Transit Company

[PUC No. 3082, Order No. 2468.]

Depreciation, § 24 — Annual accruals — War conditions — Transit company.

Prudent and conservative management demands that provision shall be made for increased depreciation of street cars and busses during a period of greater use because of war activities, when the rate of depreciation is higher than under normal conditions and, because of employment difficulties and difficulties in obtaining proper maintenance material, the situation is aggravated with respect to wear and tear on property.

(HANKIN, Commissioner, dissents.)

[January 5, 1943.]

APPLICATION *by transit company for approval of higher rates for accrual of depreciation; higher rates established.*

By the COMMISSION: On December 9, 1942, the Capital Transit Company requested that this Commission approve the establishment of certain rates, for accrual of depreciation, effective as of January 1, 1942, which will be higher than the rates of accrual which have been used for some years past. On December 31, 1942, this request was modified because of a decrease of $8,000,000 in its road and equipment account proposed to be made by the company. This plant adjustment will be the subject of a separate order.

The reasons given by the Capital Transit Company to substantiate its request are summarized as follows:

1. For sometime past the property and plant of the company has been subjected to unusual wear and tear because of the severe strains placed up-

on it arising from the demands made by war activities in the District of Columbia.

2. The company has been obliged to employ additional maintenance and operating personnel and to replace a large number of experienced men who have been called into the armed service of the United States, with the result that its plant is suffering to some extent because of the lesser average experience of operating and maintenance employees.

3. The difficulties being encountered in obtaining proper maintenance materials also aggravate the situation with respect to wear and tear on its property.

The Commission finds from records available that during the nine months ended September 30, 1942, the average use of street cars on a per-car basis has increased by approximately 20 per cent over the average use of street cars during the previous eight years. Similarly, the average use per bus for the first nine months of 1942 has increased by about 10 per cent over the average use per bus for the previous eight years. These increases refer to the total miles per year operated per vehicle owned. Likewise, the use of track by street cars has been increased, the car miles per year operated over the track for the period from May to September, 1942, being 33⅓ per cent greater than the miles operated in the year 1941, which mileage was greater than any previous year since 1935. It is particularly significant that the increase in use has been accompanied by unusual loading conditions. All of these factors operate toward a more rapid depreciation of plant and equipment of the Capital Transit Company.

The Commission also finds that the present rates of accrual for depreciation were based upon operations of the transit system in normal times. There is no experience from which the Commission can ascertain accurately the rate at which the property is depreciating under the present abnormal conditions. It is obvious to the Commission that the rate of depreciation under existing conditions is higher than under normal conditions and that prudent and conservative management demands that provision for such increased depreciation should be made during the period of such greater use.

The Commission also finds that although extensive hearings were conducted at substantial cost, which were concerned with the valuation of the property of the Capital Transit Company as of December 31, 1935, the property on the books of the company has not been fully classified by detailed accounts and that for the interim the Capital Transit Company has been accruing depreciation on items, other than the busses and certain street cars at a composite rate. Over-all checks indicate that these rates should be increased.

The Commission further finds that the amount of depreciation which will be accrued at the rates suggested by the Capital Transit Company will be substantially the same as the amount of depreciation taken by the company for income tax purposes.

In view of the foregoing conditions, the Commission finds that the rates of depreciation hereinafter authorized are reasonable and necessary to provide for the currently accelerated depreciation.

It is *ordered:*

Section 1. That the Capital Transit Company be, and it is hereby, authorized and directed to establish the following rates of depreciation while the present unusual conditions prevail, effective as of January 1, 1942:

a. Depreciation on busses at the rate of 11.1 per cent per annum.

b. Depreciation on new streamlined street cars at the rate of 5 per cent per annum.

c. Depreciation on property other than busses, new streamlined street cars, and Providence cars at the rate of 2 per cent per annum, to be applied to the recorded cost of such property adjusted by the elimination of $8,000,000 therefrom.

Section 2. That the foregoing rates be approved to meet the necessity occasioned by war demands upon the property of the company and that this approval of such rates is not to be understood to be a final determination of proper rates of depreciation under Par. 16 of the act creating the Commission.

Section 3. That the approval granted herein is not to be understood as a final determination of proper rates of depreciation for rate-making purposes.

Section 4. That § 1 of Orders Nos. 1426, 11 PUR(NS) 85 and 1435 be suspended only to the extent of the changed rates of annual accruals of depreciation authorized herein.

Section 5. That these rates remain in effect until further order of this Commission.

HANKIN, Commissioner, dissenting:

I cannot agree with the action taken by the Commission authorizing the Capital Transit Company to increase its annual accruals for depreciation without a public hearing, without facts based upon a public record, without knowledge of the essential facts, and without an order which would come within the purview of the statute. My objection to the authorization is not to be construed as a determination that the company's rates of depreciation should not be increased, for neither the Commission nor I have at our disposal the facts which would enable us to determine whether the rates are adequate or inadequate, whether they should be increased or decreased. My objection is solely to the fact that the action taken by the Commission is not in compliance with the requirements of our statute and is contrary to all rules of orderly administrative procedure. The fact that a utility wants to increase its rates of depreciation does not by itself constitute sufficient reason for compliance with the request. The requirements of the law should also be considered and followed.

The Requirements of the Law

In enacting the Public Utility Act (Act of March 4, 1913, 37 Stat 974) Congress apparently regarded the entire matter of depreciation as one of primary importance. Paragraph 16 of the acts sets forth in detail the requirements imposed both on the Commission and on the utilities.

The duties imposed on the Commission are:

1. To *ascertain and determine* what are the *proper and adequate* rates of depreciation of the *several classes of property* of each public utility. In this connection the statute sets up a

standard of propriety and adequacy, namely, that these rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry.

2. To provide for *such depreciation* in fixing the rates, tolls, and charges to be paid by the public.

3. To prescribe rules, regulations, and forms of accounts regarding such depreciation. In this connection the statute requires that the moneys in the depreciation fund may be expended in keeping the property in repair and good and serviceable condition, or it may be invested, and, if invested, the income from the investment shall also be carried into the depreciation fund.

4. To make changes in such rates of depreciation from time to time as it may find necessary.

The duties imposed upon the utility are:

1. To carry a proper and adequate depreciation account.

2. To conform its depreciation accounts to the rates ascertained and determined by the Commission and to carry into effect the rules, regulations, and forms of accounts prescribed by the Commission.

3. To use the depreciation fund and the proceeds thereof for no other purposes than to keep the property in repair and in good and serviceable condition, or to invest it, unless with the consent and by order of the Commission.

Apparently Congress deemed it necessary to spell out in detail the requirements imposed with regard to the rates of depreciation and the treatment of the depreciation fund. These requirements of law cannot be lightly disregarded.

History of the Depreciation Accounts of the Capital Transit Company

The history of the Capital Transit Company with respect to the requirements of Par. 16 of the act begins with the Joint Resolution, approved January 14, 1933, authorizing the merger of The Capital Traction Company and the Washington Railway and Electric Company into the present Capital Transit Company. By this Joint Resolution Congress adopted the Unification Agreement of the predecessor companies, Par. 17 of which provided, among other things:

"That the new company shall not be required to maintain any depreciation fund if it sets up a reserve against depreciation at rates fixed therefor by the Public Utilities Commission but may use money and/or securities in any depreciation fund turned over to it in any manner approved by the Public Utilities Commission. Nothing herein provided shall be construed as changing or limiting the jurisdiction of said Commission over depreciation accounts of any of said companies."

On November 7, 1933, the Capital Transit Company submitted a special report to the Commission in which it proposed that beginning December 1, 1933, when it took over the operation of the properties of the two predecessor companies, the amount of annual accrual for depreciation be fixed by a varying ratio between its depreciation reserve and its property and plant account. If the ratio between the two accounts was between 29 per cent and 30 per cent, the annual accrual should

be 0.75 per cent of the property and plant account. If the ratio was between 28 per cent and 29 per cent, the annual depreciation rate was to be 0.8 per cent of the property and plant account, and so on. The rate of depreciation was to increase up to 1.45 per cent, if the ratio between the depreciation reserve and the property and plant account decreased to between 15 per cent and 16 per cent.

The Commission never approved these ratios. It could not approve these ratios, *first,* because Par. 16 of the statute required the Commission "to ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility"; *second,* because the ratios proposed had no real relation to the depreciation of property. A ratio between a depreciation reserve and the amount of all property, both depreciable and nondepreciable, is no indication whatever of the rate at which property depreciates. There is certainly no indication of any relationship between these ratios and the standard of propriety and adequacy prescribed by Par. 16, even if it be assumed that the company's accounts correctly reflect the amount of property and plant. However, on December 22, 1933, the Commission addressed a letter to the company stating that while it was not prepared to give approval to this or any other formula, it authorized and directed that depreciation accruals be made in accordance with the proposed formula "until such time as a thorough study of this subject can be completed and an order, based upon such study, issued." This was *nine years ago.*

On February 21, 1934, the vice chairman of the Commission addressed a letter to the president of the Capital Transit company requesting him to submit data in support of the rates of depreciation theretofore proposed. The president of the company on March 3, 1934, replied that under the proposed formula the accruals for depreciation since December 1, 1933, were insufficient, and that the company was planning a general study of the subject with revisions which would be submitted in due time. Accordingly, on August 8, 1934, the company submitted a proposed schedule of depreciation, again based upon the ratio between the depreciation reserve and the property and plant accounts. Here the rates were almost doubled, that is, if the ratio was between 29 per cent and 30 per cent, the proposed rate was to be 1.35 per cent of the property and plant account; if the ratio was between 28 per cent and 29 per cent, the rate of depreciation was to be 1.4 per cent, and so on, until the rate of depreciation was to be 2.05 per cent of the property and plant account, if the reserve for depreciation decreased to between 15 per cent and 16 per cent of the property and plant account. On August 15, 1934, the Commission answered that before any change in rates of depreciation was approved, complete data should be furnished by the company as requested in the Commission's letter of February 21, 1934. Apparently it was the intention of the Commission to comply with the requirements of the statute.

On November 14, 1934, the company submitted its data and requested that the rates be as follows:

Track and line	3.57%
Transmission and distribution	2.86%
Buildings and structures	2.00%
Power and substation equipment	2.50%
Rolling stock—Cars	3.33%
Rolling stock—Busses	10.00%
Miscellaneous equipment	8.00%

For the first time there was some approach toward the statutory requirement that proper and adequate rates of depreciation be determined for the several classes of property. This was over *eight years ago.*

The Commission apparently was of the opinion that the proposed rates would not constitute a sufficient compliance with the statute or its request for complete data. On December 31, 1934, it issued Order No. 1309, 8 PUR(NS) 58, 59, in which it reviewed and rejected the proposals made by the company. In doing so the Commission said:

"It is important to the ratepayer that *only proper and legal* amounts be charged to operating accounts for depreciation accruals. A determination of *proper* rates applicable to the *depreciable property* of the Capital Transit Company requires a study of the depreciation reserves, the history, and all other pertinent facts of that company and of its predecessors, and it is essential that the true facts relating to the depreciable property as a whole and by classes be known. Among the factors to be considered are original cost; date when the units of property were first put in service; their estimated service lives; the change or changes in such estimated service lives; the prior rate or rates of accruals and changes therein; the aggregate amount of accrual; years and dates each of the units of property was in service without accrual; gross and net estimates of salvage value; and estimates of remaining service lives.

"Depreciation charges should be set up in the accounts *for each such class of property rather than for the property as a whole.* This would give the true effect of a system of depreciation rates. Therefore, this order will establish the set-up of the classes of depreciable property for the purposes of the study and of the further schedule herein ordered." (Italics supplied.)

Accordingly, the Commission ordered the filing of rates and data with respect to 30 classes of depreciable property. It specified the kind of data to be filed, how a class of depreciable property should be treated if it covered more than one distinct type of property with different service lives. It required that the straight-line method of depreciation be used, and it, at the same time, gave notice that a hearing would be called as soon, after the filing of the rates of depreciation and supporting data by the company, as the importance and character of the study would permit. The company was required to file such data on March 1, 1935, but by Order No. 1344, the date was extended to May 1, 1935.

On May 1, 1935, the company did submit data for proposed depreciation accruals covering the classes of depreciable property enumerated in Order No. 1309, *supra,* and additional classes of property which it claimed had been omitted from, but should have been included in, that order. The requirement that the company furnish data as to the original cost of the property was not strictly complied with, due to the fact that it lacked information as to the actual original cost of the property acquired prior to July 1, 1914.

However, by taking the estimated reproduction cost of the properties as of that date and adding the net changes in the property to December 31, 1934, the company arrived at what it considered to be an approximate total of depreciable property.

No action was taken by the Commission on the data thus submitted. No hearing was held and no facts were developed as to the real, proper, and adequate rates of depreciation applicable to the several classes of property. While the entire question of depreciation was thus pending, the company requested that a determination be made as to the rate of depreciation for busses and street cars. On September 9, 1935, the Commission issued Order No. 1426, 11 PUR(NS) 85, in which it was provided that effective as of January 1, 1935, the Capital Transit Company should accrue depreciation on busses and bus equipment on the basis of a 10-year life or at the rate of 10 per cent per annum of the actual cost of such busses and bus equipment. On October 17, 1935, the Commission issued Order No. 1435, in which it provided that the Capital Transit Company should accrue in a reserve account depreciation on each new street car, beginning with the purchases made in 1935, on the basis of the original cost thereof, on a 25-year life, or at the rate of 4 per cent per annum. Both orders contained regulations relating to the keeping of records so as to reflect the amount of depreciation, required that no depreciation shall be accrued on any bus or street car after the same shall have been fully depreciated; how the account should be treated when the busses and street cars are permanently withdrawn from the service; also what should be done with salvage, damages, or insurance recovered when such busses or street cars are retired.

Since 1935, the company has been accruing depreciation on busses and street cars, acquired after January 1, 1935, at the rates prescribed by the Commission. On all street cars acquired prior to 1935, and on all other depreciable property, it has been accruing depreciation at rates supposedly in accord with the temporary authorization of December 22, 1933.[1] In 1938 the Commission completed an investigation of the value of the properties of the Capital Transit Company as of December 31, 1935, and found that the historical cost of the properties as of that date used and useful in the District of Columbia was $29,037,594, and in 1935 the recorded book cost of the company was $53,160,467. In other words, there was an overstatement of the property and plant account by $24,122,873, less the property in Maryland (about $500,000). This, however, made no difference in the treatment of annual depre-

[1] One may indeed wonder as to the meaning of the temporary authorization of December 22, 1933, viewed in the light of the separate rates prescribed for street cars and busses. Does it mean that the company was to continue depreciating its other property on the basis of the ratio between the entire reserve for depreciation and all the book costs, or all book costs less the costs of busses and street car, or the book costs of depreciable property other than busses or street cars; or was the reserve for depreciation to be diminished by the reserve attributable to busses and street cars, and the ratio be determined for all book costs, or all book costs less books costs of busses and street cars, or book costs of depreciable property less busses and street cars? If the meaning of the temporary authorization is that the reserve for depreciation is to be diminished by the amount attributable to busses and street cars, on what basis should the distribution of the reserve be made?

ciation. The company continued depreciating the property on the basis of a highly inflated property and plant account in which were included both depreciable and nondepreciable property.

Upon the figures furnished by the Commission's Accounting Bureau, it appears that for the years 1935 through 1941, the average ratio between the depreciation reserve and the book costs, eliminating busses and street cars covered by specific orders, was 14.08 per cent, and that the average rate of accruals was 1.49 per cent. But based on the estimated original cost of the property, as determined by the Commission, plus additions since 1935, the accruals were on the average at the rate of 2.80 per cent; and based on estimated original cost of depreciable property, the average accrual rate was 3.00 per cent.

I am informed that at no time since 1935 has the company segregated the annual depreciation by classes of property. The Commission finds that despite the valuation order of 1938, the property on the books of the company has not been "fully classified" [2] by detailed accounts. If this is so, one cannot tell whether or not depreciation has been accrued for property already fully depreciated; whether the rates of depreciation are or are not proper and adequate, or whether they do or do not conform to the standard prescribed by law.

The Company's Request

On December 9, 1942, the Capital Transit Company addressed a letter to the Commission stating that the depreciation accruals currently made by the company were inadequate under the abnormal conditions now existing because of the increased use of the equipment, that is, increased car and bus miles. It asked that the rate of depreciation on cars be increased from 4 per cent to 5 per cent per annum; that the accruals for depreciation on busses be increased from 10 per cent to 11.1 per cent per annum; and that the rate of depreciation on all other property be increased from approximately 1.5 per cent to 1.7 per cent per annum. The company requested that these rates be authorized retroactively to January 1, 1942.

On December 31, 1942, the company addressed another letter to the Commission, in which the company proposed to decrease its property and plant account by $8,000,000 and amended its request as to the rates of depreciation. It asked that the rate be increased to 2 per cent, rather than to 1.7 per cent.

The matter was referred to the chief accountant for a report. On December 18th he submitted a memorandum in which he stated:

1. That in the short time available it had not been possible to make but a cursory study of this "always difficult problem."

2. That the approval of rates proposed by the company would increase the annual accrual of depreciation by approximately $260,000, and that the effect of this increase would be to reduce the apparent rate of return of the company.

3. That the road and equipment accounts of the Capital Transit Company were grossly overstated, that any comparison of the reserve for depreciation with the recorded cost of road and equipment would be meaningless,

[2] "Fully classified" may be regarded as a face-saving expression.

and that the best comparison that could be made was one based upon the use of the historical cost of the company's properties found by the Commission in Order No. 1713, 25 PUR (NS) 177, brought to date by adding thereto net book addition since 1935. Upon this basis he found that the depreciation reserve was 30.59 per cent of the company's depreciable properties. He concluded: "Viewed separately or as a whole the above ratios would not appear to be unduly low."

4. He generally discussed the depreciation on busses, PCC cars, and other road and equipment. In none of these instances did he find that the rate of depreciation was too low.

5. His observation was that the only reason advanced by the company for the necessity of increasing the accrual rates was the fact that greater use was being made of equipment and property. While he conceded that this was an important factor, he also stated that this was not the controlling factor, that offsetting this was the fact that obsolescence was being deferred for the duration of the emergency for the reason that no new equipment of improved type was being manufactured, and he concluded that "it might be argued that this factor is a complete offset to the accelerated depreciation occurring by reason of increased use."

6. While he conceded that it was wise management to provide additional reserves during periods of good earnings, if past provision had been inadequate, he concluded that "based upon the information at hand such does not appear to be the case and I cannot recommend approval of the company's request."

The matter was also referred to the chief engineer, who, upon the historical cost figures submitted by the chief accountant, orally reported that the company's depreciation reserve is inadequate. His conclusion was based on a computation which showed that the property of the company had already depreciated so that it is now in a 51 per cent condition, that the depreciation reserve should therefore be 49 per cent of the cost of the property, or approximately $19,654,000, whereas it is now only $11,690,000. Upon operations in normal times, the chief engineer concluded, the present annual accruals to the depreciation fund are sufficient, but, in view of the increased use of the equipment at the present time the rates of depreciation should be increased, by approximately the amount requested by the company.

The Commission's Findings.

The Commission made the following findings:

First, that in the past nine months the use of busses, equipment, and street car tracks has increased, and that the increase in use has resulted in more rapid depreciation of the plant and equipment of the Capital Transit Company. This is a fact of which the Commission can take judicial notice.

Second, that the present rates of accrual for depreciation were based upon operations in normal times. There is no basis whatever for this finding. On the contrary, the entire history of the company's depreciation leads to the conclusion that the rates were based on ratios having no relation to actual operations.

Third, that over-all checks indicated that the rates of depreciation should be increased. This is a finding in-

sufficient under the statute. Paragraph 16 requires that the Commission *ascertain* and *determine* the *proper* and *adequate* rates of depreciation. To ascertain and determine implies that findings be made upon competent evidence, not upon alleged "over-all checks" which may or may not conform to the facts. Therefore, this finding must be regarded as insufficient.

Fourth, that the amount of depreciation which the company requests will be substantially the same as the amount of depreciation taken by the company for income tax purposes. This may be so, but the amount of depreciation claimed by the company for income tax purposes is not the standard prescribed by Par. 16. Congress has not permitted this Commission to allow such rates of depreciation as the company claims for tax purpose, but rates which "will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry." Therefore this finding is irrelevant.

Fifth, that the rates of depreciation authorized by the order are *reasonable and necessary* to provide for the currently accelerated depreciation. This is a conclusion which must be supported by the findings. It does not, however, flow from the findings made, and certainly not from the first finding which is the only one having a basis in fact. The Commission itself recognizes that it has no facts from which it can ascertain the rate at which the property is depreciating at the present time. If it does not have the facts, it cannot make a determination, and, therefore, it cannot draw a conclusion that the rates authorized are "reasonable and necessary."

Nor can it be said in this case that while the ultimate conclusion of fact is unsupported by basic findings, there are facts in the record which would support such findings, for here no record has been made. No such conclusion may be drawn from the report of the chief accountant, nor from the oral report of the chief engineer. Furthermore, the report of the chief engineer is based on a theory which is untenable. His theory is, in effect, that the company should be permitted to build up a depreciation reserve, because the present depreciation reserve is insufficient. This means that the present users of the transportation facilities of the Capital Transit Company should pay for depreciation which has accrued for years prior to this use, which would be unfair to the present users.

Paragraph 16 imposes a duty upon the Capital Transit Company to carry a "proper and adequate depreciation account." If the Capital Transit Company has not carried an adequate depreciation account in the past, it means that instead of building up a depreciation fund the company distributed such fund in the form of dividends or transferred it to nonoperating property. It must be assumed that the users of the transportation facilities in the past had already contributed an amount sufficient to carry an adequate depreciation account. The suggestion of the chief engineer, apparently adopted by the Commission, would then lead to the conclusion that the present users of the transportation

facilities should pay again for depreciation already paid for.

In view of the above, it must be concluded that the findings made by the Commission are insufficient to support any order raising the rates of depreciation.

The Commission's Order

With the above reports made by the chief accountant and the chief engineer, the Commission, on December 29, 1942, decided to grant the company's request. Before the authorization issued, however, the company amended its request, which is now being granted, as amended. The order authorizes the company to accrue depreciation on busses at 11.1 per cent, on PCC and Providence cars at 5 per cent, and on the remainder of the property at 2 per cent of the recorded book costs less $8,000,000.

In § 2 of the order, the Commission recognizes that this is not a sufficient compliance with the statutory mandate, for it provides that the rates should not be understood to be "a final determination of proper rates of depreciation under Par. 16 of the act creating the Commission." *Ante,* at p. 43. Indeed, an honest confession is good for the soul, but it does not absolve from compliance with the law.

The Commission found that "although extensive hearings were conducted at substantial cost which were concerned with the valuation of the property of the Capital Transit Company as of December 31, 1935, the property on the books of the company has not been *fully classified* by detailed accounts, and that *for the interim* the Capital Transit Company has been accruing depreciation on items other than the busses and certain street cars at a composite rate." *Ante,* at p. 42. (Italics supplied.)

This is indeed a very mild finding as compared with the actual facts. The real fact is that the company has not since 1933 classified its accounts in such a manner as to enable the Commission to prescribe rates of depreciation for the several classes of property. No attempt is being made to have the company comply with the requirements of the statute or the Commission's orders. The excuse now is that it would take too much time and too much effort to adjust the books so as to reflect the actual state of the company's properties and finances. In view of the failure of the company to comply for so long a time, the difficulties which attend compliance with the law can hardly be regarded as an excuse. Yet the Commission is granting the company's request and is making it retroactive to January 1, 1942, without findings sufficient to support the order and without any evidence to support the findings.

Section 3 of the order is a further recognition that the requirements of the law are not being complied with. It provides that the rates authorized shall not be understood to be a final determination of proper rates of depreciation for rate-making purposes. I do not know that it lies within the Commission's discretion to make such provision, in view of the unequivocal language of the statute that the Commission shall provide for *"such rates* (meaning the rates ascertained and determined in accordance with the standard prescribed) in fixing rates, tolls, and charges to be paid by the public." If the rates of depreciation

now approved are proper and adequate, they should also be rates of depreciation for rate-making purposes. If they are not rates of depreciation for rate-making purposes, it is only because they are not "proper and adequate," and therefore they should not be authorized.

The increase in the rate of depreciation is thus an additional charge imposed on the public. Under this order, the public must pay some $260,000 additional for depreciation. True, the mere transfer of $260,000 from earnings to depreciation will not prejudice the ratepayer, and, at some future time, if and when a rate determination is made, the ratepayer may be benefited by the increased depreciation reserve. But the public is not harmed at this stage only because it is being harmed by the failure of the Commission to make a proper rate determination to the end that the rates be just and reasonable (Par. 2), at this time when the company is making excessive profits. If the rates of depreciation should be increased because of the greater use of the equipment and because the present depreciation reserve is inadequate, the public should be required to contribute a larger amount for depreciation, but should also benefit to the extent of not being required to support that part of the investment which had already depreciated.

Let us see, then, what is the effect, if, as is reported by the chief engineer, the properties of the Capital Transit Company have depreciated 49 per cent, and they are now in a 51 per cent condition.

First, on November 24, 1942, the Chairman of this Commission addressed a letter to Senator Burton of the Senate District Committee stating among other things, that for the twelve months ended September 30, 1942, the rate of return earned by the Capital Transit Company was 6.4 per cent. This was computed as the ratio between the net operating revenues, as per the books of the company, and an estimated rate base of $37,097,063.26. This rate base consisted of $24,000,000, found by the Commission to be the "fair value" of the property as of December 31, 1935, plus net additions since that time, plus materials and supplies. The fact that the property acquired both before and after 1935 had depreciated since January 1, 1936, did not enter into his computation of the rate of return.

Second, on December 8, 1942, I also addressed a letter to Senator Burton in which I found that the company's rate of return for the same period was 7.83 per cent, based on the net operating revenues, as per the books of the company, and a rate base of $30,620,169.14. This rate base consisted of the estimated original cost as of December 31, 1935, which was $29,475,586.02, plus the net additions since 1936 (weighted for the year ended September 30, 1942), which were $12,599,197.37, plus materials and supplies in the amount of $754,798.28, less the depreciation reserve of $12,209,412.53.

Third, by eliminating capital stock taxes ($69,125.00), abnormal or war taxes ($1,250,000) and the difference between accruals for injuries and damages and the amounts actually paid ($187,298.85), but not eliminating any other improper items of expense (e. g. donations, dues in associations having no relation to transportation

in the District of Columbia, testimonial dinners, unreasonable promotional expenses, excessive salaries, depreciation on nondepreciable property, etc.), I found that the rate of return was 12.7 per cent.

Fourth, now let us suppose that the company's properties are in a 51 per cent condition. Then, disregarding the depreciation reserve and applying 51 per cent to the undepreciated cost of the property, plus materials and supplies, the rate base is $23,653,793.93, and the company's net return is then 10.14 per cent, instead of 7.83 per cent; or 16.51 per cent, instead of 12.7 per cent. The Chairman's computation of the rate base included $3,137,089 over and above the estimated original cost less depreciation reserve on December 31, 1935. Adding this amount to the undepreciated cost and applying the 51 per cent factor, the rate base would be $24,498,911, and the rate of return, taking the net operating income as reflected in the company's books, would be 9.79 per cent.

When a utility earns between 9.79 per cent and 16.51 per cent, and it becomes necessary to determine the proper and adequate rates of depreciation, it is not enough to say: Let the company increase its rates of depreciation, but let it not be understood that we are acting in accordance with the requirements of the statute. We are acting *contrary* to the statute when we permit the company to charge rates which are unjust and unreasonable, and when we fail to provide for "proper and adequate" rates of depreciation for the several classes of property, which are also to be charged to the public in its rates, tolls, and charges.

It is easier, of course, and more harmonious, to grant requests of this character without investigation, hearing, analysis of facts and laborious determinations. But, under this harmonious relationship between the Commission and the company, it may be surmised that the latter need not comply with the requirements of the law or of the Commission's lawful orders. It may with equal reason be assumed that it is not necessary for the Commission itself to comply with the requirements of the law.

I think that the request filed by the Capital Transit Company should be set for investigation and hearing, and that proper and adequate rates of depreciation should be ascertained and determined in conformity with the law.

COLORADO PUBLIC UTILITIES COMMISSION

Re Denver Tramway Corporation

[Case No. 4901, Decision No. 20138.]

Service, § 35 — Jurisdiction of Commission — Municipal limits.

1. The Colorado Commission has no jurisdiction over operations of a transportation company within the city limits of Denver, p. 55.

Service, § 117 — Public convenience and necessity — Wartime.

2. The term "public convenience and necessity" has an entirely different meaning in wartime than it has in peace time and under normal conditions, and all civilian convenience must be subordinated to the war effort, p. 56.

Service, § 187 — Extensions — Transportation — Wartime.

3. No extensions of mass transportation service should be ordered where civilian necessity is shown except as required in the war effort, p. 56.

Service, § 187 — Extensions — Wartime.

4. The Commission should not require any extensions of service when mass transportation facilities are taxed to their utmost unless public convenience and necessity, in view of its wartime definition, is shown, p. 56.

[December 10, 1942.]

PETITION *by residents for extension of local transportation service; extension denied.*

APPEARANCES: Dr. Harry A. Shier, Wheatridge, President of Wheatridge Improvement Association; Mrs. Clara Palmer, Wheatridge, Vice President of Wheatridge Improvement Association; P. B. Haskin, Wheatridge, Treasurer of Wheatridge Improvement Association; Roxie Broad, Wheatridge, Secretary of Wheatridge Improvement Association; Major Victor Grant, Reverend R. E. West, Paul C. Stevens, Sam Y. West, Charles Wilmore, Louis A. Cherbeneau, D. S. Hutchinson, Earl Chambers, Albert Johnson, Homer Pearson, Emory O'Connell, J. B. Hale, and John Guillian, Wheatridge, Members of the Board of Directors of Wheatridge Improvement Association, for said Association; W. A. Alexander, Tramway Building, Denver, Colorado, for Denver Tramway Company.

By the COMMISSION: The above matter was heard on Tuesday, October 27, 1942, at Denver, Colorado.

This matter was initiated by petition of several hundred residents of the Wheatridge area adjoining Denver on the northwest, seeking the establishment and maintenance of passenger transportation facilities by the Denver Tramway Company on West 38th avenue from Sheridan boulevard, which is the western city limits of the city, westward to a point at least as far as the Lutheran Sanitarium, which is situated at 8300 West 38th avenue, outside of the city limits of Denver.

Representatives of the Wheatridge Improvement Association, a voluntary organization organized for the purpose of securing this service, had previously consulted with the Denver Tramway Company for establishment of such service, but were advised that the service could not be instituted at the present time, hence this matter was heard, as stated, the petition being treated as a formal application.

At the hearing, Dr. Harry A. Shier, president of the Wheatridge Improvement Association, presented a plan for the institution of not only the service petitioned for, but also of a proposed transportation route extending from Sheridan boulevard eastward through the city of Denver, eventually connect-

ing with the Rocky Mountain Arsenal, situated about 6 miles east and north of the eastern city limits of the city.

[1] It is necessary only to state that the Colorado Public Utilities Commission has no jurisdiction over the operations of the Denver Tramway Company, or any other transportation agency, within the city limits of Denver, hence any discussion of the plan proposed by Dr. Shier from Sheridan boulevard east through the city of Denver would be superfluous.

It developed at the hearing that there are about 5,000 residents in the Wheatridge area, extending from approximately 26th avenue to Arvada, and from Sheridan boulevard to Howell boulevard. The primary concern of all the witnesses who testified seemed to be to provide better service from this area to the Remington Arms Plant and to Denver. However, no witness was able to state whether or not any residents of this area worked at the Remington Arms Plant. Reverend Richard E. West testified that he had observed as many as thirty cars parked at 38th avenue and Sheridan boulevard all day long. This might indicate that some of the occupants of these cars drove their cars to this point, then proceeded to the Arms Plant by transportation facilities, but at most, this is a supposition. Testimony was introduced showing that workers living in the vicinity of Howell boulevard would have to walk 2 or 3 miles to Sheridan boulevard, and then take the bus to the Loop in downtown Denver, proceeding out to the Arms plant from there.

At the hearing, a secondary desire on the part of the residents of the Wheatridge area developed to be a desire for transportation from this area to the Rocky Mountain Arsenal, as before stated. Witnesses for the tramway company testified that arrangements had already been made for transportation from the Denver area to the Rocky Mountain Arsenal, and at least one witness for the Wheatridge Improvement Association testified that, if such transportation had been arranged, the case of the petitioners did not, in his opinion, rest upon very solid ground at the present time.

Emory O'Connell, a resident of the Wheatridge area, testified that, in his opinion, the matter should be left open, in order to develop more facts and collect more statistics. However, Dr. Shier, president of the association, requested by telephone on November 30th that an immediate decision be rendered by the Commission.

There was considerable testimony on the part of residents of the Wheatridge area expressing a desire for the service, and indicating inconvenience through lack thereof, but no evidence was introduced upon which could be based a determination by this Commission that public convenience and necessity require the proposed service.

H. S. Robertson, President of the Denver Tramway Company, testified that 90 per cent of the transportation of the company was within the corporate limits of Denver, with only 10 per cent on the fringes, and that under a directive of the Office of Defense Transportation issued April 17, 1942, no new service by gasoline busses could be instituted which was not then in operation, unless instituted on the basis of serving defense plants; that, beginning November 15, 1942, all transportation agencies were re-

quired to obtain certificates of war necessity, which meant that only service connected with the war effort could be maintained or instituted. He further stated that civilian service of the type requested was, in his opinion, far different from war service. He said that the Tramway Company had purchased material to convert from rail to rubber on 22nd avenue, but that the Office of Defense Transportation had denied delivery. According to his testimony, the Remington Arms plant conducted a survey approximately six months prior to the hearing, which disclosed that very few persons from the Wheatridge area were working in the Arms plant.

There was no testimony to contradict the testimony of Mr. Robertson that the Office of Defense Transportation issued a directive on April 17, 1942, prohibiting any new bus lines from being instituted, unless it was on a basis of service to defense plants, and there was no testimony that any considerable number of residents of the Wheatridge area worked at any defense plant in the vicinity of Denver.

[2–4] Upon the record as developed at the hearing, the Commission, however desirous it might be, and is, of providing better transportation facilities for the people of this rapidly developing suburban community, could come to no other conclusion than that public convenience and necessity were not shown, and the Commission would not be warranted in requiring the establishment and maintenance of the proposed service under present conditions. Were times and conditions normal, the desires of the petitioners might be interpreted as evidence of public convenience and necessity, which might warrant the Commission in granting the petition, but the term "public convenience and necessity" has an entirely different meaning in war-time than it has in peace time and under normal conditions. All civilian convenience must be subordinated to the War Effort, and considering scarcity of equipment, where civilian necessity is shown, no extensions of mass transportation service should be ordered; except as required in the war effort.

It is common knowledge, and the evidence disclosed, that the mass transportation facilities in Denver and vicinity are taxed to their utmost, and the Commission feels that it should not require any extensions of service unless public convenience and necessity, in view of its wartime definition, is shown.

The Commission finds that public convenience and necessity do not require the proposed service, and that said petition should be denied.

ORDER

It is *ordered:*

That public convenience and necessity do not require the service petitioned for, and the petition is hereby denied.

This order is entered without prejudice to petitioners to renew their application, in the event a substantial change in conditions occurs as of the result of the nationwide gasoline rationing, which became effective December 1, 1942.

This order shall become effective twenty days from date.

Re Trustees, Midland Utilities Company et al.

[File No. 70-24, Release No. 3888.]

Consolidation, merger, and sale, § 13 — Necessity of governmental authorization — Sale of electric utility assets.

The acquisition, by a subsidiary, of the electric utility assets of an affiliate is exempt from provisions of § 9(a) of the Holding Company Act by virtue of § 9(b)(1), 15 USCA § 79i(b)(1), where the acquisition has been specifically approved by the state Commission, but such exemption does not apply to the affiliate's water and other miscellaneous assets, these not being "utility assets" under the terms of the act.

[November 3, 1942.]

APPLICATION *for authority to sell assets of subsidiary company to associate; exemption granted with respect to electric utility assets but denied with respect to water and other miscellaneous assets.*

APPEARANCES: Lawyer and Anderson, by John C. Lawyer, for Hobart Light & Water Company and Northern Indiana Public Service Company; Daniel F. Harrington and Robert N. Hislop, of the Public Utilities Division of the Commission.

By the COMMISSION: The trustees of the estate of Midland Utilities Company (Midland), a registered holding company,[1] have joined with Hobart Light & Water Company (Hobart Light), a directly owned subsidiary, in a filing pursuant to § 12 (d) and § 12(f) of the Public Utility Holding Company Act of 1935, 15 USCA § 79*l* (d), (f), and Rules U-43 and U-44 promulgated thereunder. As amended, the filing concerns the proposed sale of the assets of Hobart Light (excluding cash on hand) to Northern Indiana Public Service Company (Northern), a direct subsidiary of Midland, for a price of $500,000 payment to be evidenced by 69,500 shares of no-par common stock of Northern.

Northern has filed an application pursuant to § 6(b) of the act, 15 USCA § 79f(b), with respect to the issuance and sale of its common stock, and an application pursuant to § 10, 15 USCA § 79j, for approval of the acquisition of the nonutility assets of Hobart Light.

[1] Midland is in reorganization in the United States district court for the court of Delaware pursuant to § 77B of the Bankruptcy Act. Jay Samuel Hartt and Clarence A. Southerland have been appointed by the court as trustees therefor and are registered as a holding company under the Public Utility Holding Company Act of 1935.

It is contemplated that following the consummation of the proposed transactions, Hobart Light will be dissolved, and its assets, including the common stock of Northern, will be conveyed to Midland.

After appropriate public notice, hearings were held at which no member of the public, or representative of any public body appeared, or expressed the desire to participate or otherwise to be heard.

Nature of Applicants-Declarants

Midland is a registered holding company, owning all of the outstanding securities of Hobart Light, and approximately 99 per cent of the common stock of Northern.

Northern is a corporation organized under the laws of the state of Indiana, and is a public utility engaged in supplying electrical energy, gas, water, and other services, in the northern part of the state of Indiana. It supplies gas to the public in the city of Hobart, Indiana, and sells electrical energy at wholesale to Hobart Light. Its annual gross revenues approximate $25,000,000.

Hobart Light is a corporation organized under the laws of the state of Indiana, and is a public utility engaged in supplying electric energy to approximately 2,000 customers, and water service to approximately 1,100 customers in the city of Hobart. Hobart Light is solely a distributing company, purchasing all its electrical energy from Northern. Annual gross revenues approximate $110,000. The city of Hobart is completely surrounded by the service area of Northern.

Nature of Transactions Considered by the Commission

As hereinbefore indicated, the filing proposes the sale of the assets of Hobart Light to Northern in consideration of 69,500 shares of the common stock of Northern.

The Public Service Commission of the state of Indiana has, by an order issued on February 2, 1940, and amended on March 27, 1940, approved the sale and acquisition of the Hobart Light assets and the issuance by Northern of 69,500 shares of its common stock for the purpose of acquiring said assets.[2]

The problems confronting this Commission are concerned with the extent to which, because of the state Commission approval, the acquisition by Northern of the assets of Hobart Light is entitled to an exemption from § 10 by virtue of the provisions of § 9(b)(1), 15 USCA § 79i (b)(1); whether, even if, § 9(b)(1) is applicable to the acquisition by Northern of the electric assets of Hobart Light, the acquisition of the nonutility assets of Hobart Light meets the standards of § 10; and whether or not the issuance and sale of the securities by Northern are entitled to an exemption from § 7, 15 USCA § 79g, by virtue of the provisions of § 6(b).

Since the sale by Hobart Light of its assets involves an indirect sale of such assets by a registered holding company (Midland), and, further, is a sale to an affiliate (Northern), the provisions of §§ 12(d) and 12(f) of the act and Rules U–43 and U–44

[2] The U. S. district court for Delaware has authorized the trustees to take the necessary steps for the effectuation of the proposed transactions.

must be considered in relation to the proposed sale by Hobart Light.

The Proposed Acquisition by Northern

The assets of Hobart Light consist of electric utility property, water property, property used jointly by its electric and water departments (characterized by Hobart Light as "common assets") and certain current assets.[3]

Section 9(b)(1) provides that § 9(a) (and accordingly § 10) shall not apply to "the acquisition by a public utility company of utility assets, the acquisition of which has been expressly authorized by a state Commission." Utility assets are defined in § 2(a)(18), 15 USCA § 79b(a)(18), as being "the facilities, in place, of any electric utility company or gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas." Accordingly, it is apparent that the acquisition of the electric assets of Hobart Light by Northern is not subject to the standards of § 10 of the act. We are concerned in these proceedings, therefore, with the question of the acquisition by Northern of the water assets, "common assets," and current assets of Hobart Light.

The record indicates that the original cost of the water property of Hobart Light, as of the date of the proposed sale, was $388,498.62; and the original cost of the common assets, as at the same date, was $6,495.57. The gross book value of these assets, as at the same date, was $364,174.02, while the net book value was $296,389.74.[4]

Northern proposes to record the water assets on its books at original cost ($388,498.62), less an estimated depreciation reserve of $253,498.62, or a net carrying value of $135,000, this being an amount equal to the estimated realizable sales value of such property. The common assets are to be recorded on the books of Northern at $5,846.02, which represents original cost of such assets depreciated by 10 per cent.[5]

The Issuance and Sale of Securities by Northern

As has been hereinbefore indicated, Northern proposes to issue 69,500 shares of its no-par value common stock for the assets of Hobart Light, excluding cash on hand. The issue and sale of these securities have been expressly approved by the state Commission of the state in which Northern is organized and doing business.

These shares are to be issued in payment of the contract price of $500,000; accordingly a value of $7.194 per share has been placed upon the common stock of Northern for the purposes of this transaction. Such an estimate of value for the common

[3] The excess of current liabilities to be assumed, by Northern over current assets to be acquired, amounts to only $39.33, and accordingly is being ignored hereinafter.

[4] The depreciation reserve per books of Hobart Light is not segregated by departments, but company engineers have estimated that a 10 per cent reserve for the electric and common properties is adequate. On the basis of such an allocation, the net book value of the water and common property as of the date of proposed sale was $296,389.74.

[5] Our reference to the proposed accounting treatment, of course, should not be construed as affecting the jurisdiction of the state of Indiana Public Service Commission, or any other regulatory body having jurisdiction therein.

stock of Northern appears high.[6] However, it appears unnecessary that a precise determination be arrived at on this point.

Approximately 99 per cent of the 2,112,050 shares of the common stock of Northern is owned by Midland, therefore, the higher the value placed on each share of Northern, the smaller the number of shares that will be issued for the assets of Hobart Light, and the less likelihood there will be that the interest of the public holders of Northern's common will be diluted.

Conclusions of Law and Fact

The acquisition by Northern of the electric utility assets of Hobart Light is exempt from the provisions of § 9 (a) by virtue of § 9(b)(1), inasmuch as the acquisition has been specifically approved by the Public Service Commission of Indiana.

Northern has filed an application, pursuant to § 10, in connection with its acquisition of the water assets. Under § 10(c)(1), the Commission may not approve an acquisition which is detrimental to the carrying out of the provisions of § 11. However, Midland now controls both Northern and Hobart, and the acquisition by Northern of the physical property of Hobart will not make compliance with the provisions of § 11(b)(1) by Midland more difficult. We consequently make no adverse findings under § 10(c)(1). On the other hand, our present determination is, of course, in no way to be construed as indicating that Midland may retain control over all of the properties of Northern under the standards of § 11(b)(1). It is unnecessary for us to make any adverse findings under § 10(b) of the act in connection with the acquisition.

The application of Northern with respect to the issuance and sale of its common stock complies with the requirements of § 6(b) of the act, since the issue and sale have been expressly authorized by the state Commission and are solely for the purpose of financing the business of Northern.

We have hereinbefore indicated that even though the acquisition of the electric assets by Northern is exempt from the provisions of §§ 9(a) and 10 by virtue of § 9(b)(1), nevertheless the sale of all the assets of Hobart Light is subject to § 12, this arising from the fact that the sale is indirectly by a registered holding company of utility assets (§ 12(d) and Rule U–44), and, further, that it is a sale to an affiliate (§ 12(f) and Rule U–43). We have further pointed out above that the securities to be issued and sold by Northern in consideration for these assets meet the standards of § 6(b) of the act, and, accordingly, are exempt from the provisions of § 7. In addition to receiving the approval of the appropriate state Commission on the indicated aspects of the proposed transactions the court, in which Midland Utilities Company is undergoing reorganization, has authorized the trustees to undertake the prosecution of the

[6] The 1942 net earnings of Northern available for common stock is estimated at $370,000, or only 18 cents per share. This compares with net income for 1941 (adjusted to give effect to the acquisition of the properties of Gary Heat, Light and Water Company) amounting to approximately $2,000,000, or approximately $1 per share. The decrease in net income is due primarily to estimated increased Federal income taxes.

transactions. Under all the circumstances of this case, we find no reason for making any adverse findings under § 12 and the applicable provisions of our general rules and regulations.

An appropriate order will be accordingly issued.

INDIANA PUBLIC SERVICE COMMISSION

Re Public Service Company of Indiana, Incorporated

[No. 15847.]

Consolidation, merger, and sale, § 6 — Jurisdiction of Commission — Acquisition from foreign corporation — Operation outside of state.

1. The Commission has no jurisdiction to grant or deny authority for the acquisition, by a public utility under its jurisdiction, of the outstanding capital stock of a foreign corporation not owning any property or facilities or conducting any operations within the state, p. 61.

Commissions, § 17 — Jurisdiction — Statutory limitations.

2. The Commission cannot assume jurisdiction of a subject matter wherein jurisdiction has not been specifically conferred upon it by statute, p. 63.

[December 17, 1942.]

PETITION *for approval of acquisition of outstanding capital stock of a foreign corporation; dismissed*

By the COMMISSION: Stuckey, Commissioner: On the 18th day of November, 1942, Public Service Company of Indiana, Inc., filed its verified petition with the Public Service Commission of Indiana requesting an order from the Commission approving the purchase by petitioner, upon the terms proposed, of all the issued and outstanding capital stock of Union City Electric Company (an Ohio Corporation) to wit: 525 shares of common stock, and making such other and further orders in the premises as may be meet.

In the meantime, certain discussions arose between petitioner and the Commission relating to just what authority, if any, this Commission had in either granting or denying the petition in this cause.

Thereafter, on the 7th day of December, 1942, petitioner filed its written motion to dismiss the said petition for want of jurisdiction.

[1] The Commission, having considered the said petition and the motion to dismiss, and having considered applicable statutes relating to the sale and purchase of any property, stock, or

bonds of a public utility of the state of Indiana, finds that the subject matter of said petition is the acquisition by petitioner of the issued and outstanding capital stock of Union City Electric Company, an Ohio corporation; that petitioner is a public utility within the meaning of that term as defined in § 1 of, and used in, the "Public Service Commission Act" of Indiana, as set out in Burns' Stats. § 54–105. That said Union City Electric Company operates an electric utility service in Ohio but does not own any property or facilities or conduct any operations in Indiana, and is not, therefore, a public utility within the definition of said term as defined and used in said act (§ 54–105). That under the Indiana Statutes the Public Service Commission of Indiana is given jurisdiction over the acquisition of stock of another corporation by a corporation which is a public utility within the meaning of such term as defined in said act, only in cases where such public utility proposes to acquire stock issued by a corporation which is also a public utility within the meaning of such term as defined in said § 54–105 (or §§ 1 and 95 of the Public Service Commission Act).

The Commission further finds that the other applicable statute which relates to the purchase of any of the property, stock, or bonds of another public utility is the one passed by the general assembly in 1913, Chap. 76, § 95, p. 167, as amended by the Acts of 1925, Chap. 54, § 1, p. 181, as set out in Burns' Stats. § 54–509. We quote from the applicable part of that statute:

"No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage, or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the Commission."

"No such public utility" refers to the definition thereof (§ 54–105). As the definition of a public utility now stands, among other changes, and the ones which especially apply here, are: There was added the definition of utility, namely:

"The term 'utility' as used in this act shall mean every street railway or interurban railway, and every plant or equipment within the state used for the conveyance of telegraph and telephone messages, or for the production, transmission, delivery, or furnishing of heat, light, water, or power, or for the furnishing of elevator or warehouse service, either directly or indirectly to the public."

Further, the definition of a municipality was changed to read:

"The term 'municipality' as used in this act shall mean any city or town of the state of Indiana."

Prior to 1925, § 54–509, the applicable portion of this section read:

"No such corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the Commission."

Further, prior to the amendment of

said section and § 54–105 in 1933, the inference could have been reasonably drawn that an Indiana public utility was required to get authority from this Commission in seeking to obtain any part of the property, stock, or bonds of a corporation engaged in the same or a similar business located in the same or *any other municipality* whether located in Indiana or any other state. When, however, the amendment added "of the state of Indiana," then, it would appear no authority would be required when the purchase of any property, stock, or bonds was to be made of a corporation engaged in the same or a similar business located outside the state of Indiana.

It appears to the Commission that the language of the statutes (as above quoted) is clear and that had the legislature intended that an Indiana public utility must obtain authority from the Commission in seeking to acquire any of the property, stock, or bonds of a corporation engaged in the same or a similar business outside the state of Indiana the applicable statutes, when they were amended, would have so provided.

[2] As a general proposition, the position of the Commission is that it cannot assume jurisdiction of a subject matter wherein jurisdiction has not been specifically conferred upon it by statute and, therefore, the motion filed herein for dismissal should be, and the same hereby is, sustained and the said petition should be dismissed.

It is therefore *ordered* by the Public Service Commission of Indiana, that the petition filed herein, by Public Service Company of Indiana, Inc., be, and the same hereby is, dismissed.

MONTANA PUBLIC SERVICE COMMISSION

Re Town of Townsend Water Works

[Docket No. 3411, Report and Order No. 1801.]

Return, § 115 — Water utility.

Six per cent is a reasonable return on the used and useful property of a water company.

[September 23, 1942.]

APPLICATION *for approval of new schedule of water rates; granted.*

APPEARANCES: Frank T. Hooks, Attorney at Law, Townsend, being also City Attorney, Town Clerk, and Town Treasurer, representing the Townsend Water Works; Enor K. Matson, Counsel for the Board.

Before: Horace F. Casey, Commissioner, Paul T. Smith, Commis-

sioner, and Austin B. Middleton, Commissioner Chairman.

By the BOARD: The Town of Townsend Water Works on July 9, 1942, filed an application, submitting a schedule of monthly flat rates for water and also minimum meter charges for water. A hearing was held at Townsend, Montana, on September 10, 1942, at the courthouse. There were no protestants.

The proof submitted by the applicant disclosed that in practical effect the rates submitted do not constitute a raise in rates, but that they represent a method of computation which includes all appliances using water and that the rates are in fact not raised. The proof offered also disclosed that the net value of the property used by the Town of Townsend Water Works, used and useful in the service of its customers, is $75,706.61. The gross earnings of the waterworks for the year July 1, 1940, to June 30, 1941, amounted to $5,647.18 and for the following year, from July 1, 1940, to June 30, 1942, the gross earnings were $6,051.59. After the expenses of salaries, repairs, maintenance, and supervision were deducted, the net earnings for the year July 1, 1940, to June 30, 1941, were $959.98, and for the following year the net earnings were $2,329.92. It appears, therefore, that the earnings of the waterworks are not adequate to net 6 per cent on the net capital invested.

Findings of Fact

On the evidence presented the Commission now finds:

1. The net value of the property belonging to the applicant, used and useful in serving its customers, less depreciation, is approximately $75,705.61.

2. The net earnings of the company after paying operating expenses were $959.98 for the fiscal year beginning July 1, 1940, and ending June 30, 1941, and $2,329.92 for the fiscal year beginning July 1, 1941, and ending June 30, 1942.

3. Six per cent is a reasonable return on the property invested.

4. The rates submitted by the applicant will not net a return on the property of the waterworks of more than 6 per cent on the property, used and useful by the waterworks.

Conclusions of Law

The Board concludes: That the application of the Town of Townsend Water Works, in so far as concerns the monthly rates and minimum meter rates, should be granted.

Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Flexible Bus-drop Cable

A new loom bus-drop cable which carries power from bus bar to individual motor driven machines in war production plants, is announced by the Wire & Cable Section of General Electric Company's Appliance & Merchandise Department at Bridgeport, Conn.

The loom bus-drop cable can be used in new or conversion wiring or as a maintenance item. It can be hooked up easily and quickly in LVD or bus-duct systems. It is designed for long life under severe conditions such as vibration and rough usage, and it is neat in appearance.

Substitutes and How to Get Them

A service aimed at solving the perplexing problem of obtaining substitutes for scarce industrial materials is announced by Berliner Technical Research, 225 Fifth Ave., New York.

Not only does this research organization offer information on substitutes for items on the critical list but precise information is given on the available sources specifying names and addresses.

The Berliner information is issued on loose leaves in a system of continuous monthly supplementary reports so that subscribers may keep pace with the swift and revolutionary technological changes occurring under the impact of war. The service is a constant inspiration for new ideas, new products, new methods, new processes, new formulae and new technics. Subscribers seeking highly specialized information not contained in the regular service, are offered individual consulting privileges, without charge.

High-Speed Relay for Generator Protection

A new generator differential relay, Type CFD, for use in generator protection, has been announced by the General Electric Company. It is a high-speed, induction-cylinder device, incorporating a new principle called "product restraint" with variable slope characteristics.

This new combination eliminates the difficulty previously encountered with high-speed generator relays due to the transient current transformer errors on heavy through faults. The use of the "product restraint" principle assures positive operation on internal faults since the restraining force in case of any single-end-feed condition will be zero or negative because one of the two terms making up the product is zero.

The relay is 20-5/16 inches by 5-1/2 inches in the standard 3-element drawout case, and can be supplied for surface or semi-flush mounting. Each element of the relay is of the familiar eight-pole, induction-cylinder type. Three poles are used for the differential operating function, and three poles provide the "product restraint."

Catalogs and Bulletins

Maintenance News

"Victory Production and Maintenance News," previously issued as "Victory News" by Allis-Chalmers, Milwaukee, Wisconsin, will endeavor to help industry find out how to keep its production machines running through the rest of the war.

Inviting an exchange of maintenance ideas from equipment operators, the publication carries these in addition to tips from Allis-Chalmers engineers on the proper maintenance of the hundreds of products manufactured by this company. A handy index lists maintenance articles appearing currently in trade papers.

This publication may be obtained regularly by writing the manufacturer.

Metal Cut-off Band Saw

A metal cut-off band saw manufactured by the Johnson Manufacturing Corp., Albion, Mich., is described in a recently issued 4-page bulletin. Set-ups take only a minute or two, and unskilled hands can use the machine after a relatively short instruction period, according to the manufacturer. Copies of this bulletin may be obtained from the Johnson Manufacturing Corp., Sales Development Division, 50th Floor, Chrysler Bldg., New York.

Rust-Proofing Compounds

Rust-proofing compounds manufactured by the Black Bear Company, Inc., Long Island City, New York, are described in a bulletin issued by the manufacturer. The folder explains the uses and methods of application of Black Bear Anti-Rust "O," and Black Bear

Catalogs & Bulletins (Cont'd)

Anti-Rust "I." The "O" compound is designed expressly for outdoor use; Black Bear "I" is recommended for indoor use only. Copies of this folder are available from the manufacturer.

NoDrip Handbook

Getting right down to the bottom of the condensation drip problem, a 32-page NoDrip Handbook issued by the J. W. Mortell Co., Kankakee, Ill., tells how to prevent and cure damaging condensation and sweat that forms on precious metal pipes and fixtures, on basement walls, ceilings of concrete, wood, plaster, etc.

The handbook contains instructions as to application, coverage, drying time; complete listings of the many uses for NoDrip; and other valuable data. A subject index of the contents appears on the front cover of the book, which adds much to its usefulness. The manufacturer believes it is probably the most complete study available today of condensation and its cure.

Copy of the handbook will be sent on request to the manufacturer.

Inspection Check for Trolley Coaches

"Inspection and Care of Trolley Coach Electrical Equipment" is the title of a 20-page Westinghouse booklet.

Designed to help operators obtain maximum efficiency from trolley coach equipment, the booklet advocates a light inspection every 1,000 miles and a heavy inspection every 8,000 miles. Specific suggestions are given for the motors; master controller; main contactors; overload trip relay, inductive field shunt; auxiliary contactor panel and main resistors.

Points which are to be inspected only at the 8,000 mile point are boxed in red in the booklet so that they can be easily picked out.

Copies of this booklet (B-3196) may be obtained by writing Department 7-N-20, Westinghouse Electric & Mfg. Co., East Pittsburgh, Pa.

Porcelain Insulators

The Porcelain Insulator Corporation of Lima, N. Y., has just announced the issuance of a new general catalog covering all standard insulators and hardware manufactured by this company.

Printed in two colors, engineering outline drawings of the various insulators, clamps and hardware items are shown with dimensions. Complete specifications are given for each.

A unique and useful feature of the catalog is the Bare Wire Table for all types of line in general use, giving wire sizes, number of wires in strand, diameter in inches, weight in pounds per thousand feet and breaking strength. Hard drawn copper, aluminum conductor-steel reinforced, copperweld and copperweld copper wires are covered. A complete list of insulator equivalents is also included which covers all types of insulators from the smallest pin type to the largest switch and bus units.

The new Pinco catalog was designed with today's problems in mind. Complete in its listings it is also concise enough to present all the essential information the engineer needs in its easiest-to-find form. File size and compact, it is easily kept available for quick reference.

Copies may be secured from the manufacturer.

Master Nutrition Guide

To meet an ever increasing demand for a simple and instructive method for getting more and more war workers to eat the kind of foods that will help keep them healthy and on the job, the General Electric Consumers Institute at Bridgeport, Conn. announces publication of a Master Nutrition Guide.

This new manual is designed for use by industrial dietitians, home economists, school teachers, home demonstration agents, public utilities and department store merchandisers and all others interested in spreading the gospel of good nutrition through group education.

Copies of the Master Nutrition Guide are offered free in single copies to instructors who plan to use the course. Additional quantities may be obtained at cost.

Pump Bulletins

Centrifugal pumps for general use, having capacities to 2,000 g.p.m., heads to 300 ft., are described in bulletin W 312-B2C issued by Worthington Pump and Machinery Corp., Harrison, N. J.

Specifications are given for Type L single-stage volute pumps Nos. 3 to 6. Specifications for Type R single-stage volute centrifugals are given in a separate bulletin W 311-B1D.

Utilization Voltage Standards

"Utilization Voltage Standardization Recommendations" is the title of a joint report of the Electrical Equipment Committee and the Transmission and Distribution Committee of the Edison Electric Institute, New York.

The need for such standards, the report points out, arises specifically from the multiplicity of service voltages which are in use throughout the industry. This has led to demands for considerable variety in the ratings of utilization equipment and to the fear that the variety may tend to increase unless some steps are taken to establish standard utilization voltage limits. It is hoped that the results of these studies will encourage a greater degree of standardization of utilization voltages and of equipment design and that they will

Catalogs & Bulletins (Cont'd)

contribute to a better understanding of all of the problems involved.

This E.E.I. report (publication No. J8) is priced at 20¢ to members and 50¢ to non-members.

Chemical Engineers' War Meeting

The proceedings of the War Service Meeting of the Association of Consulting Chemists and Chemical Engineers, Inc., held at the headquarters of the Electric Testing Laboratories, Inc., in New York, have been published in booklet form.

Copies are available from the laboratories.

Manufacturers' Notes

Capacitors Step Up Transmission

Electricity flowing through a midget power line recently demonstrated that existing transmission systems can be stepped up to carry 65 per cent more power by adding thousands of small capacitor units. R. D. Evans, consulting transmission engineer at the Westinghouse Electric & Mfg. Company's East Pittsburgh works, conducted the laboratory experiment.

By using 7200 of the small capacitors together with the necessary generating equipment, a 250-mile-long power line with a capacity of 175,000 kilowatts can be stepped up to carry 290,000 kilowatts.

The cost would be about $1,200,000 by this method compared to $4,500,000 for building an additional power line plus auxiliary equipment.

Use of capacitors also conserves vital metals. The 7,200 capacitors would require nine tons of copper and brass, 175 tons of steel and a few tons of aluminum; extra power lines and electrical equipment would require 2,900 tons of copper and 7,600 tons of steel.

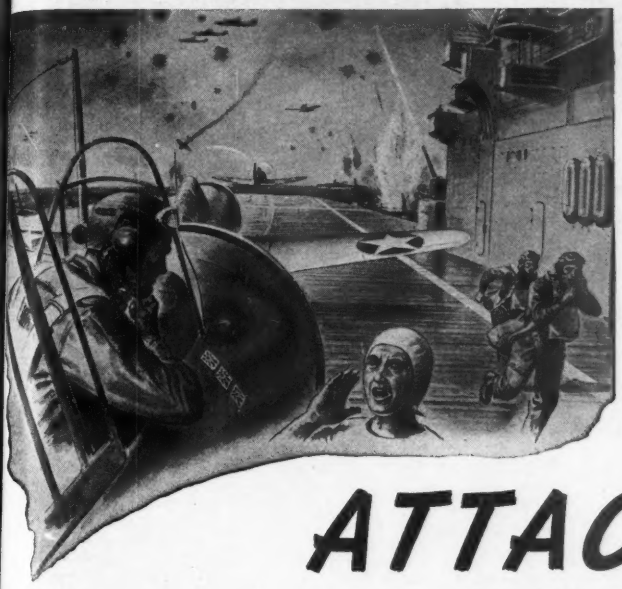
Aluminum Price Reductions

A new and lower schedule of prices for semi-fabricated and fabricated aluminum has been announced by Aluminum Company of America.

Chevrolet Service League Expands

Membership in the Victory Service League, national patriotic alliance of American car and truck owners, has passed the half-million mark, it was announced recently by the League's national director, William E. Holler.

Launched under the sponsorship of Chevrolet dealers only four months ago, the League has attracted members at the impressive rate of more than 100,000 a month. Dedicated to patriotic service through organized participation in vital war programs and to the conservation of the nation's automotive transportation system, the League has won high com-



Exide
BATTERIES

ATTACK
IS THE BEST DEFENSE

HERE'S HOW TO ATTACK YOUR BATTERY MAINTENANCE PROBLEMS

1. Keep adding approved water at regular intervals.
2. Keep batteries clean and dry. Wash off tops with a solution of one pound of bicarbonate of soda to one gallon of water; rinse and dry thoroughly.
3. Keep batteries fully charged, but not overcharged. Check your D. C. control bus voltmeter to see that it is in calibration.
4. Keep records of water additions, voltage and gravity readings for comparisons as batteries grow older.

If you wish more detailed information or have a special battery maintenance problem, write us. We want to help you get the long life that is built into every Exide battery. Ask for booklet, Form 3225.

OUR strongest defense is a hard attack. That's an old Naval tradition now proving its truth on all the waters of the Seven Seas.

Similarly, the best defense against maintenance problems is a relentless, unceasing attack on negligence and wear. Your best weapons of attack are to be found in the four basic rules of battery maintenance listed at the left. Follow them closely to protect your battery from the war of attrition waged by carelessness or neglect. And remember, Buy to Last and Save to Win.

THE ELECTRIC STORAGE BATTERY COMPANY
The World's Largest Manufacturers of Storage Batteries for Every Purpose
PHILADELPHIA
Exide Batteries of Canada, Limited, Toronto

***Manufacturers' Notes* (*Cont'd*)**

mendation for valuable assistance it has given in such patriotic movements as War Bond drives, collecting scrap metal and rubber, and providing books and sports equipment for men in the armed services.

J-M Reports to the Public

Pioneering with a new kind of corporation report, President Lewis H. Brown of Johns-Manville followed up the formal 1942 company statement to stockholders and employees with a "report to the public" of six plainly phrased items which he said highlighted Johns-Manville's first full year of wartime operations.

Stripped of all legalistic accounting language, President Brown briefly described Johns-Manville's record-breaking production for 1942 as follows:

Total Income	$108½ million	100%
Used for all costs of doing business (except those shown below), including depreciation, depletion and reserves for war contingencies	$49½ million	46%
To employees for salaries and wages	$37 million	34%
To government for taxes	$16⅛ million	15%
To stockholders in dividends	$ 2 million	2%
Leaving in the business	$ 3½ million	3%

Wages and salaries were 23 per cent greater than in 1941; taxes were equivalent to $19.65 per share of common stock, or to $1,098 per employee. Dividends of $7.00 per share were paid on preferred stock while holders of common stock received $2.25 per share.

Salvage Methods Win War Bonds

War Bonds to the extent of $650 have been awarded in a nationwide contest designed to reveal to industry the most outstanding methods of salvaging and maintaining machinery under wartime conditions. Sponsored by Metallizing Engineering Co., Inc., Long Island City, N. Y. this is the second of a series of similar contests open to users of any metal spraying equipment in the United States and Canada.

Stanton Hertz

Stanton Hertz, vice-president and assistant to the president of the Copperweld Steel Company, Glassport, Pa., lost his life in a fire in his home in Pittsburgh, Pa., February 27th. A 13-year-old daughter, Alice, also perished, while his wife and another daughter, Lois, were critically injured.

Mr. Hertz was a graduate of Alabama Polytechnic Institute at Auburn, Alabama, his native state. He served as lieutenant in the Engineers Corps in World War I. In 1921 he started his career with Copperweld and served successively as chief engineer at the New York office, general manager of sales, and vice-president. Mr. Hertz served as executive director of the Copper Wire Engineering Association for five years beginning in 1936 and on his return to Copperweld in 1941 assumed the position he held at his death.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

SANDERSON & PORTER
ENGINEERS AND CONSTRUCTORS
Design and Construction of Industrials
and Public Utilities.
Reports and Appraisals in Connection
With Management Problems, Financing, Reorganization.
Chicago New York San Francisco

Sargent & Lundy
ENGINEERS
Steam and Electric Plants
Utilities—Industrials
Studies—Reports—Design—Supervision
Chicago

STONE & WEBSTER ENGINEERING CORPORATION
DESIGN AND CONSTRUCTION
REPORTS • CONSULTING ENGINEERING • APPRAISALS
BOSTON • NEW YORK • CHICAGO • HOUSTON • PITTSBURGH
SAN FRANCISCO • LOS ANGELES

THE J. G. WHITE ENGINEERING CORPORATION
DESIGN • CONSTRUCTION • REPORTS • APPRAISALS
80 BROAD STREET, NEW YORK

BARKER & WHEELER, ENGINEERS
DESIGNS AND CONSTRUCTION — OPERATING BETTERMENTS — COMPLETE OFFICE SYSTEMS — MANAGEMENT — APPRAISALS — RATES
11 PARK PLACE, NEW YORK CITY
36 STATE STREET, ALBANY, N. Y.

EARL L. CARTER
Consulting Engineer
REGISTERED IN INDIANA, NEW YORK, OHIO, PENNSYLVANIA, WEST VIRGINIA, KENTUCKY
Public Utility Valuations, Reports and Original Cost Studies.
910 *Electric Building* *Indianapolis, Ind.*

BLACK & VEATCH
CONSULTING ENGINEERS
Appraisals, investigations and reports, design and supervision of construction of Public Utility Properties
4706 BROADWAY KANSAS CITY, MO.

FRANCIS S. HABERLY
ENGINEER
Appraisals—Original Cost Accounting—Rates—Depreciation—Trends
122 SOUTH MICHIGAN AVENUE, CHICAGO

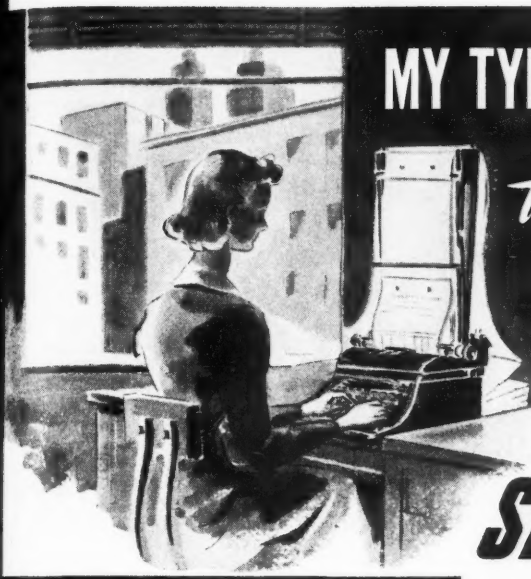
(*Professional Directory Concluded on Next Page*)

PROFESSIONAL DIRECTORY
(concluded)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

* Fortnightly advertisers not in this issue.



MY TYPEWRITER DOES

twice as much work with an

EGRY SPEED FEED

EGRY BUSINESS SYSTEMS COMPRISE:

EGRY SPEED-FEED. May be attached to any standard make typewriter in one minute, and with Egry Continuous Forms, doubles operator output. One machine does the work of two.

EGRY TRU-PAK Register speeds the writing of all handwritten records. Assures complete control over every business transaction.

EGRY ALLSET Forms, the modern single set forms for speed writing all business records. Individually bound sets, interleaved with one-time carbons. ALLSETS are ready for immediate use for typed or handwritten forms.

EGRY CONTINUOUS Forms increase the output of operators by 50% and more because they eliminate time-consuming operations. Furnished with or without interleaved one-time carbons.

AND in addition to the above, there are others you'll want to know more about.

The loss of typewriters to Uncle Sam, and the shortage of competent operators, will be no handicap if you use Egry Business Systems. In thousands of instances Egry Speed-Feeds and Egry Continuous Forms have enabled operators to produce twice as much work as they did before with the typewriter alone and ordinary loose forms and carbons.

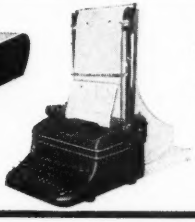
Other Egry Business Systems for handwritten records are equally important. Investigate today. You'll be surprised at the amount of time you will save when you use Egry Business Systems. More detailed information will be sent on request, or free demonstrations may be arranged at your convenience. There's no cost or obligation, of course. Address Department F-318.

Sales agencies in principal cities.

THE EGRY REGISTER COMPANY • Dayton, Ohio

Egry Continuous Forms Limited, King and Dufferin Sts., Toronto, Ontario, Canada.

EGRY TRU-PAK



EGRY SPEED-FEED

EGRY ALLSET FORMS

SYSTEMS EGRY REGISTER COMPANY

"Do it in Writing"

Facts You Can Use to Cut Distribution Costs

TRANSITE DUCTS ARE STRONG!

YOU save all the expense of "concreting-in" when you use Johns-Manville Transite Conduit. So strong it needs no protective casing of any kind, this durable duct holds its true form under sustained earth loads and traffic pressure. Warping is practically eliminated.

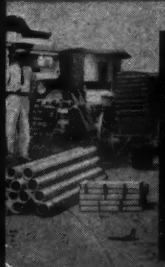
And you spend less money on maintenance, for Transite is an asbestos-cement product . . . completely non-metallic and inorganic. It can't burn, rot or cause dangerous fumes or gases. It offers exceptional resistance to weather and corrosion. Yet installed costs are low, for Transite's long lengths, light weight and smooth bore make work fast and economical.

For complete details, write for brochure DS-410. Johns-Manville, 22 East 40th Street, New York, N. Y.

NO CONCRETE CASING is needed when you install J-M Transite Conduit. It does not warp . . . holds its strength and true form under heavy earth loads and traffic stress.

MADE OF ASBESTOS AND CEMENT Transite Conduit cannot rust or rot . . . offers exceptional resistance to all forms of corrosion.

TRANSITE DUCTS are light in weight, easy to assemble. The smooth bore stays smooth in service . . . permits easy, rapid cable pulls at any time.



FOR EFFICIENT, LOW-COST SERVICE, SPECIFY...

Johns-Manville

TRANSITE DUCTS

TRANSITE CONDUIT . . . For use underground without a concrete envelope and for exposed locations.

TRANSITE KORDUCT . . . For installation in concrete. Thinner walled, lower priced, but otherwise identical with Transite Conduit.